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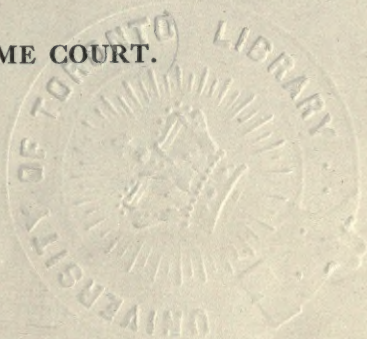
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THE COCA-COLA COMPANY

Coca-Cola
TRADE MARK
REGISTERED

*"A single thing coming from a
single source, and well known
to the community."*

—U. S. SUPREME COURT.



OPINIONS, ORDERS, INJUNCTIONS, AND DECREES
RELATING TO UNFAIR COMPETITION AND
INFRINGEMENT OF TRADE-MARK

FIRST EDITION
1923

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*Respectfully dedicated to the patrons
of Coca-Cola. "The protection given
by law to trade-marks has for its object
the protection of the owner in his prop-
erty, and the protection of the public
from deception."*

1923

A TRADE-MARK IN LAW

“The function of a trade-mark is to point distinctively, either by its own meaning or by association, to the origin or ownership of the wares to which it is applied.” Thus Coca-Cola signifies, in the language of the United States Supreme Court, “a single thing coming from a single source, and well known to the community.”

Trade-mark rights are moral capital on which much business is done. As valued in good will, they compose vital assets of many of the world's foremost businesses. But in all the history of the United States Supreme Court, approximately fifty-nine unfair competition cases have come up for adjudication. About forty-one involved trade-marks. Of these, twelve have been upheld as valid trade-marks.

Because Coca-Cola is one of these, we have presented in this book the cases and a number of exhibits which give the legal history of Coca-Cola, dating from its beginning in 1886 and covering the 37 years since. The record is made accessible in this form as a contribution from our experience in support of fair competition in business.

THE COCA-COLA COMPANY.

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Coca-Cola

Koko

SUPREME COURT OF THE UNITED STATES

254 U. S. 143

No. 101—OCTOBER TERM, 1920

THE COCA-COLA COMPANY, Petitioner,
v.
THE KOKE COMPANY OF AMERICA, *et al.*

On Writ of Certiorari to the United States Circuit
Court of Appeals for The Ninth Circuit
(December 6, 1920).

HAROLD HIRSCH,
EDWARD S. ROGERS,
FREDERICK W. LEHMAN,
FRANK F. REED,
Solicitors and of Counsel for Petitioner.

RICHARD E. SLOAN,
AUSTIN B. LITTLETON,
For Defendants.

THE COCA-COLA COMPANY

SUPREME COURT OF THE UNITED STATES

No. 101—OCTOBER TERM, 1920

THE COCA-COLA COMPANY, Petitioner,
v.
THE KOKE COMPANY OF AMERICA, *et al.*

On Writ of Certiorari to the United States Circuit
Court of Appeals for The Ninth Circuit
(December 6, 1920).

MR. JUSTICE HOLMES delivered the opinion of the
Court:

This is a bill in equity brought by The Coca-Cola Company to prevent the infringement of its trade-mark Coca-Cola and unfair competition with it in its business of making and selling the beverage for which the trade-mark is used. The District Court gave the plaintiff a decree, 235 Fed. Rep. 408. This was reversed by the Circuit Court of Appeals, 255 Fed. Rep. 894. Subsequently a writ of certiorari was granted by this court. 250 U. S. 637.

It appears that after the plaintiff's predecessors in title had used the mark for some years it was registered under the Act of Congress of March 3, 1881, and again under the Act of February 20, 1905, c. 592, 33 Stat. 724. Both the courts below agree that, subject to the one question to be considered, the plaintiff has a right to equitable relief. Whatever may have been its original weakness, the mark for years has

acquired a secondary significance and has indicated the plaintiff's product alone. It is found that defendant's mixture is made and sold in imitation of the plaintiff's and that the word Koke was chosen for the purpose of reaping the benefit of the advertising done by the plaintiff and of selling the imitation as and for the plaintiff's goods. The only obstacle found by the Circuit Court of Appeals in the way of continuing the injunction granted below was its opinion that the trade-mark in itself and the advertisements accompanying it made such fraudulent representations to the public that the plaintiff had lost its claim to any help from the court. That is the question upon which the writ of certiorari was granted and the main one that we shall discuss.

Of course a man is not to be protected in the use of a device the very purpose and effect of which is to swindle the public. But the defects of a plaintiff do not offer a very broad ground for allowing another to swindle him. The defense relied on here should be scrutinized with a critical eye. The main point is this: Before 1900 the beginning of the good will was more or less helped by the presence of cocaine, a drug that, like alcohol or caffeine or opium, may be described as a deadly poison or as a valuable item of the pharmacopœia according to the rhetorical purposes in view. The amount seems to have been very small, but it may have been enough to begin a bad habit and after the Food and Drug Act of June 30, 1906, c. 3915, if not earlier, long before this suit was brought, it was eliminated from the plaintiff's compound. Coca leaves still are used, to be sure, but after they have been subjected to a drastic process that removes from them every characteristic substance except a little tannin and still less chlorophyl. The cola nut, at best, on its side furnishes but a very small portion of the caffeine, which now is the only element that has appreciable effect. That comes mainly from other sources. It is argued that the continued use of the name imports a representation that has ceased to be

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true and that the representation is reinforced by a picture of coca leaves and cola nuts upon the label and by advertisements, which, however, were many years before this suit was brought, that the drink is an "ideal nerve tonic and stimulant," etc., and that thus the very thing sought to be protected is used as a fraud.

The argument does not satisfy us. We are dealing here with a popular drink, not with a medicine, and, although what has been said might suggest that its attraction lay in producing the expectation of a toxic effect, the facts point to a different conclusion. Since 1900 the sales have increased at a very great rate, corresponding to a like increase in advertising. The name now characterizes a beverage to be had at almost any soda fountain. It means a single thing coming from a single source, and well known to the community. It hardly would be too much to say that the drink characterizes the name as much as the name the drink. In other words, Coca-Cola probably means to most persons the plaintiff's familiar product to be had everywhere, rather than a compound of particular substances. Although the fact did not appear in *United States v. Coca-Cola Co.*, 241 U. S. 265, 289, we see no reason to doubt that, as we have said, it has acquired a secondary meaning in which perhaps the product is more emphasized than the producer, but to which the producer is entitled. The coca leaves and whatever of cola nut is employed may be used to justify the continuance of the name or they may affect the flavor as the plaintiff contends, but before this suit was brought the plaintiff had advertised to the public that it must not expect and would not find cocaine, and had eliminated everything tending to suggest cocaine effects except the name and the picture of the leaves and nuts, which probably conveyed little or nothing to most who saw it. It appears to us that it would be going too far to deny the plaintiff relief against a palpable fraud because possibly here and there an ignorant person might call

for the drink with the hope for incipient cocaine intoxication. The plaintiff's position must be judged by the facts as they were when the suit was begun, not by facts of a different condition and an earlier time.

The decree of the District Court restrains the defendant from using the word "dope." The plaintiff illustrated in a very striking way the fact that the word is one of the most featureless known even to the language of those who are incapable of discriminating speech. In some places it would be used to call for Coca-Cola. It equally would have been used to call for anything else having about it a faint aureole of poison. It does not suggest Coca-Cola by similarity, and, whatever objections there may be to its use, objections which the plaintiff equally makes to its application to Coca-Cola, we see no ground on which the plaintiff can claim a personal right to exclude the defendant from using it.

The product, including the coloring matter, is free to all who can make it if no extrinsic deceiving element is present. The injunction should be modified also in this respect.

Decree reversed. Decree of District Court modified and affirmed.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE COCA-COLA COMPANY, Plaintiff,

v.

THE KOKE COMPANY OF AMERICA,
THE SOUTHERN KOKE COMPANY, LTD.,
THE KOKE COMPANY OF TEXAS,
THE KOKE COMPANY OF OKLAHOMA, and
THE KOKE COMPANY OF ARKANSAS,
Defendants.

DECREE

Upon the filing of the mandate of January, 1921, of the Supreme Court, and it appearing therefrom that said court has reversed the decree of the Circuit Court of Appeals of the Ninth Circuit in this cause, has modified and affirmed the decree of this court herein, and has remanded this cause to this court, and it appearing further that, pending the proceeding in the Supreme Court, The Coca-Cola Company, a Delaware corporation, succeeded to the rights of the original plaintiff herein, The Coca-Cola Company, a Georgia corporation, and that said Coca-Cola Company of Delaware, has been duly substituted as plaintiff herein; now, in conformity with the mandate of the Supreme Court of the United States, *it is ordered, adjudged and decreed* as follows:

(1) That the court has jurisdiction of the subject matter and of the parties to the suit.

(2) That the word "Coca-Cola" is a valid trade-mark.

(3) That plaintiff is the owner of and alone entitled to use the trade-mark "Coca-Cola" and that its goods alone can lawfully be sold under that name.

(4) That the word "Koke" is an abbreviation of the word "Coca-Cola" and is used by the public and by purchasers in designating the plaintiff's product "Coca-Cola."

(5) That the defendant, The Koke Company of America, and its predecessor, J. C. Mayfield, did not adopt or make use of the name "Koke" until the year 1909, and that they have had and have no right to its use.

(6) That defendants and their predecessors have no interest in or claim to the trade-mark "Coca-Cola" or the "Coca-Cola" business or formula, and the defendants and their predecessors' claim of interest in the "Coca-Cola" business, the trade-mark "Coca-Cola" and knowledge of the "Coca-Cola" formula are without foundation.

(7) That the word "Koke" was adopted and used by the defendants and their predecessors with the deliberate purpose of representing their goods to be the product and manufacture of The Coca-Cola Company.

(8) The defendants' salesmen were instructed to sell and did sell defendants' product as and for "Coca-Cola."

(9) That the defendants and each of them have infringed the plaintiff's trade-mark, not, however, by the use of the word "Dope," and have been guilty of unfair competition with the plaintiff.

(10) That defendants, The Koke Company of America, The Southern Koke Company, Ltd., The Koke Company of Texas, The Koke Company of Oklahoma, and the Koke Company of Arkansas, and each of them, their officers, servants, agents, employees, attorneys, licensees, transferees and assigns, and each and all thereof, and all acting by or under their authority, be and they are each and all *perpetually enjoined and restrained* from using or employing, in connection with the manufacture, advertisement, offering for sale or sale of any product not being the genuine product of the plaintiff, the word "Coca-Cola" or any like word, or the word "Koke"

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or any like word; from claiming or asserting any right in the name "Koke" or interfering or threatening any prosecution, or interference with the use thereof, from using or employing or authorizing the use or employment of labels, designs or devices identical with or like the labels, designs or devices of the plaintiff, or the labels, designs or devices used by the defendants and referred to in the bill of complaint herein; from using, in connection with the sale or shipment of any product not the plaintiff's, barrels or receptacles colored in imitation of the plaintiff's said barrels or receptacles; from stating or representing that the syrup made or sold by defendants, or any of them, is made from the same formula as "Coca-Cola" syrup, or that defendants, or any of them, know or may rightfully use or employ the "Coca-Cola" formula; and further, from doing any act or thing, or using any name or names, devices, artifices or contrivances which may be calculated to represent that any product not of the plaintiff's production is the genuine "Coca-Cola" of plaintiff, and that *writs of perpetual injunction* accordingly issue forthwith.

(11) That defendants and each of them be required to account to plaintiff for any and all profits derived by them, or any or either of them, and to pay to the plaintiff such damages as it may have sustained by reason of the unlawful conduct of defendants and each of them, excluding therefrom any profits or damages made or sustained by the use of the word "Dope," and that this cause be and it is hereby referred to Edwin F. Jones, the Standing Master in Chancery of this Court, to take and state an accounting to the plaintiff for any and all such profits and any and all of said damages, with full power to subpoena and order the attendance of witnesses, the taking of depositions and the production of books, papers and documents pertinent to the taking and stating of said accounting for profits and damages, and to report said

accounting and statement of profits and damages as aforesaid as by law provided.

(12) That defendants pay the costs of this suit to be taxed, including the costs in the Circuit Court of Appeals, the costs in the Supreme Court and the costs in this court, and that upon taxation plaintiff have execution therefor.

Dated the 14th day of June, A. D. 1921.

WM. H. SAWTELLE,
Judge.

IN THE SUPREME COURT OF THE UNITED STATES

241 U. S. 995

No. 562—MAY 22, 1916

UNITED STATES
v.
FORTY BARRELS AND TWENTY KEGS OF
COCA-COLA

In Error to the United States Circuit Court of Appeals
for the Sixth Circuit.

HAROLD HIRSCH,
W. D. THOMSON,
J. B. SIZER,
A. W. CHAMBLISS,
For Defendant in Error.

IN THE SUPREME COURT OF THE
UNITED STATES

241 U. S. 995

No. 562—MAY 22, 1916

UNITED STATES, Plaintiff in Error,

v.

FORTY BARRELS AND TWENTY KEGS OF
COCA-COLA, THE COCA-COLA COMPANY
OF ATLANTA, GEORGIA, Complainant.

FOOD AND DRUGS—PROPRIETARY FOOD—ADULTERATION—HARMFUL INGREDIENT.

1. A poisonous or deleterious ingredient called for as a constituent by a secret formula for a food product sold under its own distinctive name may still be an added ingredient within the meaning of the provisions of the food and drugs act of June 30, 1906 (34 Stat. at L. 768, Chap. 3915, Comp. Stat. 1913, Section 8717), condemning as adulterated any article of food that contains "any added poisonous or other added deleterious ingredient which may render such article injurious to health," and the provisos in Section 8 that food mixtures or compounds "which may be now or from time to time hereafter known as articles of food under their own distinctive names" are to enjoy the stated immunity only in case they do "not contain any added poisonous or deleterious ingredients," and that nothing in the act shall be construed to require manufacturers of proprietary foods "which contain no unwholesome added ingredient" to disclose their trade formulas except as the provisions of the act may require to secure freedom from adulteration or misbranding.

FOOD AND DRUGS—ADULTERATION—PROPRIETARY FOOD—ABSTRACTING HARMFUL INGREDIENT.

2. The elimination of a harmful ingredient from a proprietary food which without such ingredient would not be the same, does

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not constitute an adulteration under the food and drugs act of June 30, 1906 (34 Stat. at L. 768, chap. 3915, Comp. Stat. 1913, Sec. 8717), Section 7, by the abstraction of a "valuable constituent."

FOOD AND DRUGS—ADULTERATION—ADDED HARMFUL INGREDIENT—CAFFEINE.

3. Caffeine introduced into a syrup during the second or third melting is an "added" ingredient within the meaning of the food and drugs act of June 30, 1906 (34 Stat. at L. 768, chap. 3915, Comp. Stat. 1913, Section 8717), condemning as adulterated any article of food that contains "any added poisonous or other added deleterious ingredient which may render such article injurious to health," although it is called for as a constituent by the secret formula under which the syrup is compounded.

TRIAL — QUESTION FOR JURY — ADULTERATION — ADDED HARMFUL INGREDIENT.

4. Whether caffeine added to a food product is a poisonous or deleterious ingredient which may render the article deleterious to health, within the meaning of the act of June 30, 1906 (34 Stat. at L. 768, chap. 3915, Comp. Stat. 1913, Section 8717), condemning as adulterated any article of food that contains "any added poisonous or other added deleterious ingredient which may render such article injurious to health," is a question of fact for the jury, where the evidence on that point is conflicting.

FOOD AND DRUGS—MISBRANDING—COCA-COLA—DISTINCTIVE OR DESCRIPTIVE NAME.

5. The name "Coca-Cola" cannot be said as a matter of law to be distinctive rather than descriptive of a compound with coca and cola ingredients, so as to escape condemnation under the food and drugs act of June 30, 1906 (34 Stat. at L. 768, chap. 3915, Comp. Stat. 1913, Section 8717), Section 8, as misbranded in case of the absence of either coca or cola, on the theory that it was within the protection of the proviso in that section that an article of food shall not be deemed to be misbranded in the case of "mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names," if the distinctive name of another article is not used or imitated, and the name on the label or brand is accompanied with a statement of the place of production.

FOOD AND DRUGS—MISBRANDING—COCA-COLA—SECONDARY SIGNIFICANCE OF NAME.

6. A secondary significance cannot be attributed to the name "Coca-Cola," as descriptive of a product known to be destitute of either of the products indicated by its primary meaning, so as to save it from condemnation under the food and drugs act of June 30, 1906 (34 Stat. at L. 768, chap. 3915, Comp. Stat. 1913, Section

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8717), Section 8, on the theory that it is within the protection accorded by the proviso in that section to food mixtures or compounds known under their own distinctive names.

Messrs. Harold Hirsch and J. B. Sizer argued the cause, and with *Messrs. A. W. Chambliss and W. D. Thomson*, filed a brief for defendant in error.

In error to the United States Circuit Court of Appeals for the Sixth Circuit to review a judgment which affirmed a judgment of the District Court for the Eastern District of Tennessee, entered upon a directed verdict in favor of the claimant in a libel for condemnation under the Food and Drugs Act. *Reversed and remanded* for further proceedings.

MR. JUSTICE HUGHES delivered the opinion of the Court:

This is a libel for condemnation under the Food and Drugs Act (June 30, 1906, chap. 3915, 34 Stat. at L. 768, Comp. Stat. 1913, Section 8717) of a certain quantity of a food product known as "Coca-Cola" transported for sale, from Atlanta, Georgia, to Chattanooga, Tennessee. It was alleged that the product was adulterated and misbranded. The allegation of adulteration was, in substance, that the product contained an added poisonous or added deleterious ingredient, caffeine, which might render the product injurious to health. It was alleged to be misbranded in that the name "Coca-Cola" was a representation of the presence of the substances coca and cola; that the product "contained no coca and little if any cola," and thus was an "imitation" of these substances, and was offered for sale under their "distinctive name." We omit other charges which the government subsequently withdrew. The claimant answered, admitting that the product contained as one of its ingredients "a small portion of caffeine,"

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but denying that it was either an "added" ingredient, or a poisonous or a deleterious ingredient which might make the product injurious. It was also denied that there were substances known as coca and cola "under their own distinctive names," and it was averred that the product did contain "certain elements or substances derived from coca leaves and cola nuts." The answer also set forth, in substance, that "Coca-Cola" was the "distinctive name" of the product under which it had been known and sold for more than twenty years as an article of food, with other averments negating adulteration and misbranding under the provisions of the act.

Jury trial was demanded, and voluminous testimony was taken. The district judge directed a verdict for the claimant (191 Fed. 431), and judgment entered accordingly was affirmed on writ of error by the Circuit Court of Appeals (132 C. C. A. 47, 215 Fed. 535). And the government now prosecutes this writ.

First. As to "adulteration." The claimant, in its summary of the testimony, states that the article in question "is a syrup manufactured by the claimant * * * and sold and used as a base for soft drinks both at soda fountains and in bottles. The evidence shows that the article contains sugar, water, caffeine, glycerine, lime juice and other flavoring matters. As used by the consumer, about 1 ounce of this syrup is taken in a glass mixed with about 7 ounces of carbonated water, so that the consumer gets in an 8-ounce glass or bottle of the beverage, about 1.21 grains of caffeine." It is said that in the year 1886 a pharmacist in Atlanta "compounded a syrup by a secret formula, which he called "Coca-Cola Syrup and Extract"; that the claimant acquired "the formula, name, label and good will for the product" in 1892, and then registered "a trade-mark for the syrup consisting of the name Coca-Cola,"

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and has since manufactured and sold the syrup under that name. The proportion of caffeine was slightly diminished in the preparation of the article for bottling purposes. The claimant again registered the name "Coca-Cola" as a trade-mark in 1905, averring that the mark had been "in actual use as a trade-mark of the applicant for more than ten years next preceding the passage of the act of February 20, 1905," and that it was believed such use had been exclusive. It is further stated that, in manufacturing in accordance with the formula, "certain extracts from the leaves of the coca shrub and the nut kernels of the cola tree were used for the purpose of obtaining a flavor," and that "the ingredient containing these extracts," with cocaine eliminated, is designated as "Merchandise No. 5." It appears that in the manufacturing process water and sugar are boiled to make a syrup; there are four meltings; in the second or third the caffeine is put in; after the meltings the syrup is conveyed to a cooling tank and then to a mixing tank, where the other ingredients are introduced and the final combination is effected; and from the mixing tank the finished product is drawn off into barrels for shipment.

The questions with respect to the charge of "adulteration" are (1) whether the caffeine in the article was an added ingredient within the meaning of the act (Section 7, subdiv. 5th), and if so (2) whether it was a poisonous or deleterious ingredient which might render the article injurious to health. The decisive ruling in the courts below resulted from a negative answer to the first question. Both the district judge and the Circuit Court of Appeals assumed for the purpose of the decision that as to the second question there was a conflict of evidence which would require its submission to the jury (191 Fed. 433, 132 C. C. A. 47, 215 Fed. 540). But it was concluded, as the claimant contended, that the caffeine—even if

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it could be found by the jury to have the alleged effect—could not be deemed to be an “added ingredient” for the reason that the article was a compound, known and sold under its own distinctive name, of which the caffeine was a usual and normal constituent. The government challenges this ruling and the construction of the statute upon which it depends; and the extreme importance of the question thus presented with respect to the application of the act to articles of food sold under trade names is at once apparent. The government insists that the fact that a formula has been made up and followed and a distinctive name adopted does not suffice to take an article from the reach of the statute; that the standard by which the combination in such a case is to be judged is not necessarily the combination itself; that a poisonous or deleterious ingredient with the stated injurious effect may still be an added ingredient in the statutory sense, although it is covered by the formula and made a constituent of the article sold.

The term “food,” as used in the statute, includes “all articles used for food, drink, confectionery or condiment * * * whether simple, mixed or compound” (Section 6). An article of “food” is to be deemed to be “adulterated” if it contain “any added poisonous or other added deleterious ingredient which may render such article injurious to health” (Section 7, subdiv. 5th). With this section is to be read the proviso in Section 8, to the effect that “an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded” in the case of “mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names,” if the distinctive name of another article is not used or imitated, and the name on the label or brand is accompanied with a statement

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of the place of production. And Section 8 concludes with a further proviso that nothing in the act shall be construed "as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding."

In support of the ruling below, emphasis is placed upon the general purpose of the act, which, it is said, was to prevent deception, rather than to protect the public health by prohibiting traffic in articles which might be determined to be deleterious. But a description of the purpose of the statute would be inadequate which failed to take account of the design to protect the public from lurking dangers caused by the introduction of harmful ingredients, or which assumed that this end was sought to be achieved by simply requiring certain disclosures. The statute is entitled "An Act for Preventing the Manufacture, Sale or Transportation of Adulterated or Misbranded or Poisonous or Deleterious Foods, Drugs, Medicines and Liquors," etc. In the case of confectionery, we find that it is to be deemed to be adulterated if it contains certain specified substances "or other ingredient deleterious or detrimental to health." So, under Section 7, subdivision 6th, there may be adulteration of food in case the article consists in whole or in part of "any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter." In *United States v. Lexington Mill & Elevator Company*, 232 U. S. 399, 409, 58 L. ed. 658, 661, L. R. A. 1915B, 774, 34 Sup. Ct. Rep. 337, it was said that "the statute upon its face shows that the primary purpose of Congress was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated

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foods. The legislation, as against misbranding, intended to make it possible that the consumer should know that an article purchased was what it purported to be; that it might be bought for what it really was, and not upon misrepresentations as to character and quality. As against adulteration, the statute was intended to protect the public health from possible injury by adding to articles of food consumption poisonous and deleterious substances which might render such articles injurious to the health of consumers." See also *United States v. Antikamnia Co.*, 231 U. S. 654, 665, 58 L. ed. 419, 424, 34 Sup. Ct. Rep. 222, Ann. Cas. 1915A 49; H. R. Report No. 2118, 59th Cong. 1st Sess. 6-9. It is true that in executing these purposes Congress has limited its prohibitions (*Savage v. Jones*, 225 U. S. 501, 529, 532, 56 L. ed. 1182, 1193, 1194, 32 Sup. Ct. Rep. 715), and has specifically defined what shall constitute adulteration or misbranding; but, in determining the scope of specific provisions, the purpose to protect the public health, as an important aim of the statute, must not be ignored.

Reading the provisions here in question in the light of the context, we observe:

(a) That the term "adulteration" is used in a special sense. For example, the product of a diseased animal may not be adulterated in the ordinary or strict meaning of the word, but by reason of its being that product the article is adulterated within the meaning of the act. The statute with respect to "adulteration" and "misbranding" has its own glossary. We cannot, therefore, assume that simply because a prepared "food" has its formula and distinctive name, it is not, as such, "adulterated." In the case of confectionery, it is plain that the article may be "adulterated" although it is made in strict accordance with some formula and bears a fanciful trade name, if in fact it contains an "ingredient

deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.” And the context clearly indicates that, with respect to articles of food, the ordinary meaning of “adulteration” cannot be regarded as controlling.

(b) The provision of Section 7, subdivision 5th, assumes that the substance which renders the article injurious, and the introduction of which causes “adulteration” is an ingredient of the article. It must be an “added” ingredient; but it is still an ingredient. Component parts, or constituents, of the article which is the subject of the described traffic, are thus not excluded, but are included in the definition. The article referred to in subdivision 5th is the article sought to be made an article of commerce—the article which “contains” the ingredient.

(c) “Adulteration” is not to be confused with “misbranding.” The fact that the provisions as to the latter require a statement of certain substances if contained in an article of food, in order to avoid “misbranding,” does not limit the explicit provisions of Section 7, as to adulteration. Both provisions are operative. Had it been the intention of Congress to confine its definition of adulteration to the introduction of the particular substances specified in the section as to misbranding, it cannot be doubted that this would have been stated, but Congress gave a broader description of ingredients in defining “adulteration.” It is “any” added poisonous or “other added deleterious ingredient,” provided it “may render such article injurious to health.”

(d) Proprietary foods, sold under distinctive names, are within the purview of the provision. Not only is “food” defined as including articles used for food or drink, “whether simple, mixed or compound,” but the intention to include “proprietary foods” sold under distinctive names is manifest from the provisos in Section 8, which the claimant invokes. “Mixtures

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or compounds" which satisfy the first paragraph of the proviso are not only "articles of food," but are to enjoy the stated immunity only in case they do "not contain any added poisonous or deleterious ingredients." By the concluding clause of Section 8, it is provided that nothing in the act shall be construed to require manufacturers of "proprietary foods" to disclose "their trade formulas" except in so far as the provisions of the act "may require to secure freedom from adulteration or misbranding"; and the immunity is conditioned upon the fact that such foods "contain no unwholesome added ingredient." Thus the statute contemplates that mixtures or compounds manufactured by those having trade formulas and bearing distinctive names may nevertheless contain "added ingredients" which are poisonous or deleterious, and if so, the article is not taken out of the condemnation of Section 7, subdivision 5th.

(e) Again, articles of food, including "proprietary foods," which fall within this condemnation, are not saved because they were already on the market when the statute was passed. The act makes no such distinction; and it is to be observed that the proviso of Section 8 explicitly refers to "mixtures or compounds which may be now or from time to time hereafter known as articles of food." Nor does the length of the period covered by the traffic, or its extent, affect the question if the article is in fact adulterated within the meaning of the act.

Having these considerations in mind we deem it to be clear that, whatever difficulties there may be in construing the provision, the claimant's argument proves far too much. We are not now dealing with the question whether the caffeine did, or might, render the article in question injurious; that is a separate inquiry. The fundamental contention of the claimant, as we have seen, is that a constituent of a food

product, having a distinctive name, cannot be an "added" ingredient. In such case the standard is said to be the food product itself which the name designates. It must be, it is urged, this "finished product" that is "adulterated." In that view, there would seem to be no escape from the conclusion that, however poisonous or deleterious the introduced ingredient might be, and however injurious its effect, if it be made a constituent of a product having its own distinctive name it is not within the provision. If this were so, the statute would be reduced to an absurdity. Manufacturers would be free, for example, to put arsenic or strychnine or other poisonous or deleterious ingredients with an unquestioned injurious effect into compound articles of food, provided the compound were made according to formula and sold under some fanciful name which would be distinctive. When challenged upon the ground that the poison was an "added" ingredient, the answer would be that without it the so-called food product would not be the product described by the name. Further, if an article purporting to be an ordinary food product, sold under its ordinary name, were condemned because of some added deleterious ingredient, it would be difficult to see why the same result could not be attained with impunity by composing a formula and giving a distinctive name to the article with the criticised substance as a component part. We think that an analysis of the statute shows such a construction of the provision to be inadmissible. Certain incongruities may follow from any definition of the word "added," but we cannot conclude that it was the intention of Congress to afford immunity by the simple choice of a formula and a name. It does not seem to us to be a reasonable construction that in the case of "proprietary foods" sold under distinctive names, but it was not the purpose of the act to protect

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articles of this sort regardless of their character. Only such food products as contain "no unwholesome added ingredient" are within the saving clause, and in using the words quoted we are satisfied that Congress did not make the proprietary article its own standard.

Equally extreme and inadmissible is the suggestion that where a "proprietary food" would not be the same without the harmful ingredient, to eliminate the latter would constitute an "adulteration" under Section 7, subdivision 3d, by the abstraction of a "valuable constituent." In that subdivision Congress evidently refers to articles of food which normally are not within the condemnation of the act. Congress certainly did not intend that a poisonous or deleterious ingredient which made a proprietary food an enemy to the public health should be treated as a "valuable constituent," or to induce the continued use of such injurious ingredients by making their elimination an adulteration, subject to the penalties of the statute.

It is apparent, however, that Congress, in using the word "added" had some distinction in view. In the Senate bill (for which the measure as adopted was a substitute) there was a separate clause relating to "liquors," providing that the article should be deemed to be adulterated if it contained "any added ingredient of a poisonous or deleterious character"; while in the case of food (which was defined as excluding liquors) the article was to be deemed to be "adulterated" if it contained "any added poisonous or other ingredient which may render such article injurious to human health." Cong. Rec., 59th Cong., 1st Sess., Vol. 40, p. 897. In explaining the provision as to "liquors," Senator Heyburn, the chairman of the Senate committee, having the bill in charge, stated to the Senate (Id., p. 2647): "The word 'added,' after very mature consideration by your committee,

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was adopted because of the fact that there is to be found in nature's products, as she produces them, poisonous substances to be determined by analysis. Nature has so combined them that they are not a danger or an evil—that is, so long as they are left in the chemical connection in which nature has organized them; but when they are extracted by the artificial processes of chemistry they become a poison. You can extract poison from grain or its products, and when it is extracted it is a deadly poison; but if you leave that poison as nature embodied it in the original substances, it is not a dangerous poison or an active agency of poison at all. So, in order to avoid the threat that those who produce a perfectly legitimate article from a natural product might be held liable because the product contained nature's poison, it was thought sufficient to provide against the adding of any new substance that was in itself a poison, and thus emphasizing the evils of existing conditions in nature's product. That is the reason the word 'added' is in the bill. Fusel oil is a poison. If you extract it, it becomes a single active agency of destruction, but allow it to remain in the combination where nature has placed it, and, while it is nominally a poison, it is a harmless one, or comparatively so." For the Senate bill, the House of Representatives substituted a measure which had the particular provisions now under consideration in substantially the same form in which they were finally enacted into law (Section 7, subdivision 5th; Section 8, subdivision 4, provisos). And the committee of the House of Representatives, in reporting this substituted measure, said (H. R. Report No. 2118, 59th Cong., 1st. Sess., pp. 6, 7, 11): "The purpose of the pending measure is not to compel people to consume particular kinds of foods. It is not to compel manufacturers to produce particular kinds or grades of foods. One of the principal objects of the bill is to prohibit in the manufacture

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of foods intended for interstate commerce the addition of foreign substances poisonous or deleterious to health. The bill does not relate to any natural constituents of food products which are placed in the foods by nature itself. It is well known that in many kinds of foods in their natural state some quantity of poisonous or deleterious ingredients exist. How far these substances may be deleterious to health when the food articles containing them are consumed may be a subject of dispute between the scientists, but the bill reported does not in any way consider the question. If, however, poisonous or deleterious substances are added by man to the food product, then the bill declares the article to be adulterated, and forbids interstate traffic."

This statement throws light upon the intention of Congress. Illustrations are given to show possible incongruous results of the test, but they do not outweigh this deliberate declaration of purpose; nor do we find in the subsequent legislative history of the substituted measure containing the provision any opposing statement as to the significance of the phrase. It must also be noted that some of the illustrations which are given lose their force when it is remembered that the statutory ban (Section 7, subdivision 5th) by its explicit terms only applies where the added ingredient may render the article injurious to health. See *United States v. Lexington Mill & Elevator Co.*, 232 U. S. 399, 409, 58 L. ed. 658, 661, L. R. A. 1915B 774, 34 Sup. Ct. Rep. 337). It is urged that whatever may be said of natural food products, or simple food products, to which some addition is made, a "proprietary food" must necessarily be "something else than the simple or natural article"; that it is an "artificial preparation." It is insisted that every ingredient in such a compound cannot be deemed to be an "added" ingredient. But this argument, and the others that are advanced, do not compel the

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adoption of the asserted alternative as to the saving efficacy of the formula. Nor can we accept the view that the word "added" should be taken as referring to the quantity of the ingredient used. It is added ingredient which the statute describes, not added quantity of the ingredient, although, of course, quantity may be highly important in determining whether the ingredient may render the article harmful, and experience in the use of ordinary articles of food may be of greatest value in dealing with such questions of fact.

Congress, we think, referred to ingredients artificially introduced; these it described as "added." The addition might be made to a natural food product or to a compound. If the ingredient thus introduced was of the character and had the effect described, it was to make no difference whether the resulting mixture or combination was or was not called by a new name, or did or did not constitute a proprietary food. It is said that the preparation might be "entirely new." But Congress might well suppose that novelty would probably be sought by the use of such ingredients, and this would constitute a means of deception, and a menace to health from which the public should be protected. It may also have been supposed that, ordinarily, familiar food bases would be used for this purpose. But, however the compound purporting to be an article of food might be made up, we think that it was the intention of Congress that the artificial introduction of ingredients of a poisonous or deleterious character which might render the article injurious to health should cause the prohibition of the statute to attach.

In the present case, the article belongs to a familiar group; it is a syrup. It was originally called "Coca-Cola Syrup and Extract." It is produced by melting sugar, the analysis showing that 52.64 per cent. of the product is sugar and 42.63 per cent. is water. Into

the syrup, thus formed by boiling the sugar, there are introduced coloring, flavoring and other ingredients in order to give the syrup a distinctive character. The caffeine, as has been said, is introduced in the second or third "melting." We see no escape from the conclusion that it is an "added" ingredient within the meaning of the statute.

Upon the remaining question whether the caffeine was a poisonous or deleterious ingredient which might render the article injurious to health, there was a decided conflict of competent evidence. The government's experts gave testimony to the effect that it was, and the claimant introduced evidence to show the contrary. It is sufficient to say that the question was plainly one of fact which was for the consideration of the jury. See 443 Cans of Frozen Egg Product v. United States, 226 U. S. 172, 183, 57 L. ed. 174, 179, 33 Sup. Ct. Rep. 50.

Second. As to "misbranding." In the second count it was charged that the expression "Coca-Cola" represented the presence in the product of the substances coca and cola, and that it contained "no coca and little if any cola." So far as "cola" was concerned, the charge was vague and indefinite, and this seems to have been conceded by the government at the beginning of the trial. With respect to "coca," there was evidence on the part of the government tending to show that there was nothing in the product obtained from the leaves of the coca plant, while on behalf of the claimant it was testified that the material called "Merchandise No. 5" (one of the ingredients) was obtained from both coca leaves and cola nuts. It was assumed on the motion for a peremptory instruction that there might be a disputed question of fact as to whether the use of the word "coca" is to be regarded "intrinsically and originally" as stating or suggesting the presence of "some material element or quality" derived from

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coca leaves, and it was also assumed that the evidence might be deemed to be conflicting with respect to the question whether the product actually contained anything so derived. 191 Fed. 438, 439. But these issues of fact were considered not to be material. On this branch of the case, the claimant succeeded upon the ground that its article was within the protection of the proviso in Section 8 as one known "under its own distinctive name." 132 C. C. A. 47, 215 Fed. 544.

Section 8 (ante, p. 1000), in its 4th specification as to "food," provides that the article shall be deemed to be "misbranded" if the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which * * * shall be false or misleading in any particular." Then follows the proviso in question that an article not containing any added poisonous or deleterious ingredients "shall not be deemed to be * * * 'misbranded' " in the case of "mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article," if the name is accompanied with a statement of the place where the article has been produced.

A distinctive name is a name that distinguishes. It may be a name commonly used as a generic name, e. g. coffee, flour, etc. Where there is a trade description of this sort by which a product of a given kind is distinctively known to the public, it matters not that the name had originally a different significance. Thus, soda water is a familiar trade description of an article which now, as is well known, rarely contains soda in any form. Such a name is not to be deemed either "misleading" or "false" as it is in fact distinctive. But unless the name is truly

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distinctive, the immunity cannot be enjoyed; it does not extend to a case where an article is offered for sale "under the distinctive name of another article." Thus, that which is not coffee, or is an imitation of coffee, cannot be sold as coffee; and it would not be protected by being called "X's Coffee." Similarly, that which is not lemon extract could not obtain immunity by being sold under the name of "Y's Lemon Extract." The name so used is not "distinctive," as it does not appropriately distinguish the product; it is an effort to trade under the name of an article of a different sort. So, with respect to "mixtures or compounds," we think that the term "another article" in the proviso embraces different compounds from the compound in question. The aim of the statute is to prevent deception, and that which appropriately describes a different compound cannot secure protection as a "distinctive name."

A "distinctive name" may also, of course, be purely arbitrary or fanciful, and thus, being the trade description of the particular thing, may satisfy the statute, provided the name has not already been appropriated for something else so that its use would tend to deceive.

If, in the present case, the article had been named "Coca", and it were found that the name was actually descriptive in the sense that it fairly implied that the article was derived from the leaves of the coca plant, it could not be said that this was "its own distinctive name" if in fact it contained nothing so derived. The name, if thus descriptive, would impart a different product from the one to which it was actually affixed. And, in the case supposed, the name would not become the "distinctive name" of a product without any coca ingredient unless in popular acceptance it came to be regarded as identifying a product known to be of that character. It would follow that the mere sale of the product under the name "Coca", and the fact that this was used as a trade

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designation of the product, would not suffice to show that it had ceased to have its original significance if it did not appear that it had become known to the public that the article contained nothing derived from coca. Until such knowledge could be attributed to the public, the name would naturally continue to be descriptive in the original sense. Nor would it be controlling that at the time of the adoption of the name the coca plant was known only to foreigners and scientists, for if the name had appropriate reference to that plant and to substances derived therefrom, its use would primarily be taken in that sense by those who did know or who took pains to inform themselves of its meaning. Mere ignorance on the part of others as to the nature of the composition would not change the descriptive character of the designation. The same conclusion would be reached if the single name "Cola" had been used as the name of the product, and it were found that in fact the name imported that the product was obtained from the cola nut. The name would not be the distinctive name of a product not so derived until in usage it achieved that secondary significance.

We are thus brought to the question whether, if the names coca and cola were respectively descriptive, as the government contends, a combination of the two names constituted a "distinctive name" within the protection of the proviso in case either of the described ingredients was absent. It is said that "coca" indicates one article, and "cola" another, but that the two names together did not constitute the distinctive name of any other substance or combination of substances. The contention leads far. To take the illustration suggested in argument, it would permit a manufacturer, who could not use the name chocolate to describe that which was not chocolate, or vanilla to describe that which was not vanilla, to designate a mixture as "Chocolate-Vanilla,"

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although it was destitute of either or both, provided the combined name had not been previously used. We think that the contention misses the point of the proviso. A mixture or compound may have a name descriptive of its ingredients or an arbitrary name. The latter (if not already appropriated) being arbitrary, designates the particular product. Names, however, which are merely descriptive of ingredients, are not primarily descriptive names save as they appropriately describe the compound with such ingredients. To call the compound by a name descriptive of ingredients which are not present is not to give it "its own distinctive name," which distinguishes it from other compounds, but to give it the name of a different compound. That, in our judgment, is not protected by the proviso, unless the name has achieved a secondary significance as descriptive of a product known to be destitute of the ingredients indicated by its primary meaning.

In the present case we are of opinion that it could not be said as a matter of law that the name was not primarily descriptive of a compound with coca and cola ingredients, as charged. Nor is there basis for the conclusion that the designation had attained a secondary meaning as the name of a compound from which either coca or cola ingredients were known to be absent; the claimant has always insisted, and now insists, that its product contains both. But if the name was found to be descriptive, as charged, there was clearly a conflict of evidence with respect to the presence of any coca ingredient. We conclude that the Court erred in directing a verdict on the second count.

The judgment is *reversed* and the cause is *remanded* for further proceedings in conformity with this opinion.

It is so *ordered*.

MR. JUSTICE McREYNOLDS took no part in the consideration or decision of this case.

IN THE DISTRICT COURT OF THE UNITED
STATES OF AMERICA, EASTERN
DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

No. 53

UNITED STATES

v.

FORTY BARRELS AND TWENTY KEGS OF
COCA-COLA.

DECREE.

This proceeding coming on to be heard, and it appearing that the claimant, The Coca-Cola Company, without admitting the charges of either misbranding or adulteration, but expressly denying same, but stating that it has made certain modifications in the process of its manufacture, and on account of which a decision either way of the question of fact now involved would not be conclusive in any future proceeding against its present product, has, in order to dispose of this libel without the necessity of another trial, and for the sole purpose of disposing of this cause, withdrawn its claim and all other pleadings therein, and it appearing that the United States and said claimant, by their attorneys of record, have consented to the judgment herein;

And it appearing that the monition issued in this case has been heretofore returned, the usual proclamation made, all legal requirements complied with and that the default of all persons has been duly entered after withdrawal by claimant of this claim and defenses as aforesaid;

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Now, therefore, the premises considered, it is, on motion of the United States, Ordered, Sentenced and Adjudged by the Court, now here, and his Honor, the District Judge, by virtue of the power and authority in him vested, doth hereby order, sentence and adjudge that the goods, wares and merchandise seized in this proceeding be, and the same are hereby forfeited to the United States and that the said The Coca-Cola Company pay all costs of this proceeding;

It Is Further Ordered, Adjudged and Decreed that the judgment of forfeiture shall not be binding upon the said The Coca-Cola Company or its product except as to this cause and the particular goods seized herein, nor binding upon the claimant or its product as it shall relate to any other cause or proceeding of any kind or character.

And It Is Further Ordered that the said goods, wares or merchandise seized herein, to wit, the forty barrels and twenty kegs of Coca-Cola, shall be released to the claimant upon said claimant paying the costs above adjudged and giving sufficient bond, conditioned that the product shall not be sold or otherwise disposed of contrary to the provisions of the Federal Food and Drugs Act, or the laws of any State, Territory, district or insular possession of the United States.

In open court, this 12th day of November, 1918.

(Signed) SANFORD,

United States Judge.

O. K.:

Wm. L. Frierson, Asst. Atty. General.

W. T. Kenerly, U. S. Atty.

J. B. Sizer, Atty. for Coca-Cola Co.

Harold Hirsch, Attorney for The Coca-Cola Co.

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THE UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF TENNESSEE, } ss.
SOUTHERN DIVISION.

I, HORACE VAN DEVENTER, Clerk of the District Court of the United States, within and for the District aforesaid, do hereby certify that the foregoing printing and typewriting is a true, full, correct and complete copy of the original final decree on file and remaining of record in my office in the matter of The United States v. 40 Barrels and 20 Kegs of Coca-Cola, No. 53.

In Testimony Whereof I have hereunto set my hand and seal of the said District Court, at Chattanooga, Tennessee, this 20th day of April, A. D. 1918.

HORACE VAN DEVENTER,

Clerk,

By GEO. E. GRESHAM, Deputy Clerk.

THE COCA-COLA COMPANY

IN THE CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

200 FEDERAL 720

No. 2235—IN EQUITY

THE COCA-COLA COMPANY, Appellant,

v.

THE GAY-OLA COMPANY, Appellee.

1. **CORPORATION (517) — EQUITY (Sec. 339) — ANSWER AS EVIDENCE—CORPORATION DEFENDANT.**

A corporation cannot answer under oath in an equity suit, and if its answer, when verified by an officer, is evidence under the equity rule, it is not available to prove an affirmative defense.

2. **TRADE-MARKS AND TRADE-NAMES (Sec. 75) — UNFAIR COMPETITION—GROUNDS FOR EQUITABLE RELIEF.**

In a suit for unfair competition, it is not necessary to show that the immediate purchasers were deceived as to the origin of the goods; but even if they thoroughly understood that they were buying the counterfeit, and not the genuine, the manufacturer of the counterfeit will be enjoined from selling it to dealers with the purpose and expectation that it shall be used by the dealers to deceive the consumer.

3. **TRADE-MARKS AND TRADE-NAMES (Sec. 70) — “UNFAIR COMPETITION”—INTENT.**

The imitation by one manufacturer of the goods of another in name, appearance, and marking and color of packages, even if such similarities singly would not be unlawful, if accompanied by good faith, may constitute “unfair competition,” which will be enjoined, where there is an actual purpose to deceive and defraud purchasers.

(For other definitions, see Words and Phrases, vol. 8, p. 7174.)

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4. TRADE-MARKS AND TRADE-NAMES (Sec. 70) — UNFAIR COMPETITION—IMITATION IN PACKAGES AND COLOR OF PRODUCT.

Defendant manufactured a syrup for use in soda fountains, etc., and colored it to exactly resemble complainant's, which was earlier in the market, extensively advertised, and well known. The coloring matter was nonfunctional, being added to the compound solely for coloring purposes and in the quantity necessary to give it the color of complainant's. Defendant also colored its barrels and kegs red, which was the distinctive color used by complainant, and placed no marks thereon to indicate the place of manufacture. It also sent circulars to owners of soda fountains, calling attention to the cheapness of its product, and advising them that consumers could not tell it from complainant's. Held that, in view of its evident purpose to deceive consumers, all such modes of imitation should be enjoined, unless means were provided to prevent such deception.

5. TRADE-MARKS AND TRADE-NAMES (Sec. 91) — ACTION FOR UNFAIR COMPETITION—PARTIES.

A manufacturer, whose business is injured by unfair competition by the maker of a similar product, has a direct and independent right of action to enjoin such competition; and the fact that it supplies a part of its product to consumers in the territory where defendant does business only through a second company, which buys and re-sells it, and which is also injured by the acts of defendant, does not make such second company a necessary party to the suit.

6. MONOPOLIES (Sec. 21) — SUIT FOR UNFAIR COMPETITION—DEFENSES.

That a manufacturer sells its product through a system of contracts tending to maintain monopoly in a trade-marked article does not preclude it from maintaining a suit in equity to enjoin unfair and fraudulent competition by another manufacturer of a similar product.

(Unfair competition in use of trade-mark or trade-name, see notes to *Scheuer v. Muller*, 20 C. C. A.; *Lare v. Harper & Bros.*, 30 C. C. A. 367.)

Appeal from the Circuit Court of the United States for the Western District of Tennessee. JOHN E. McCALL, Judge.

Suit in equity by The Coca-Cola Company against the Gay-Ola Company. Decree for defendant, and complainant appeals. *Reversed.*

THE COCA-COLA COMPANY

Complainant below, appellant here, sought protection against the unfair competition of defendant. The bill of complaint carried as exhibits various letters and circulars of defendant. The answer admitted these letters and circulars, but denied any wrong in intent or in law, in that connection. Depositions were taken, and upon final hearing the bill was dismissed. It appeared that complainant had put upon the market very extensively a drink known as "Coca-Cola," made under a secret formula, that this business had grown up and increased and extended over a period of 20 years, and that the business had become extremely valuable. Complainant's product was in the form of an essence or concentrated liquor, designed to be mixed with water at the time of consumption. This essence had certain peculiarities of taste, color, etc., and was sold by complainant in barrels or kegs, painted with a particular shade of red, and marked with complainant's labels. Purchasers from complainant were of two classes: first, the fountain proprietors, who mixed the essence with carbonated water and sold directly to the consumer; and second, the bottling companies, who added the necessary carbonated water, and put the product up in sealed bottles, and then sold this article to retail dealers.

Defendant claimed to have discovered complainant's formula, and to be in fact making the same thing. It adopted for its product and for its corporate name the word "Gay-Ola." It proceeded to bring this product into public notice by some advertising under its own name and by some other methods not criticized by complainant—all to an extent not distinctly shown by this record. It also wrote a series of letters to bottling companies which were engaged in bottling Coca-Cola, which letters were to the effect that it would sell the bottler Gay-Ola for a less price than he was paying for Coca-Cola; that the two articles were just alike, and no one could tell the difference; that the bottler could, if he wished, substitute Gay-Ola for Coca-Cola, and his patrons would never know it; that

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several bottlers who had been handling Coca-Cola, were doing this successfully and without discovery; and that, if the bottler desired, defendant would ship him Gay-Ola in plain, unmarked packages, so that his dealings with defendant would not be observed. Several of the letters in the record are of this substantial effect, though they use different forms of expression, and some only by hint and innuendo convey the invitation to substitute and so to deceive the final purchasers. Defendant also sent circular letters to soda fountain proprietors, setting out the cheap price and the merits of Gay-Ola and its identity with Coca-Cola, and quoting from a testimonial of a soda fountain proprietor: "No one can tell it from Coca-Cola, and I sell it for Coca-Cola, and every one says I have the best Coca-Cola in the city." On these letters, the defendant added the postscript: "For your information, beg to state that we are shipping twenty-one Coca-Cola bottlers. ' 'Nuf said.' "

Candler, Thomson & Hirsch, of Atlanta, Ga., and *Lehman, Gates & Martin*, of Memphis, Tenn., for appellant.

Brown & Anderson, of Memphis, Tenn., for appellee.

Before WARRINGTON, KNAPPEN and DENISON, Circuit Judges.

DENISON, Circuit Judge (after stating the facts as above). An answer under oath was not waived. The answer filed is verified by one of the defendant's corporate officers, and sets up, by way of affirmative defense, that complainant comes with unclean hands and cannot be heard, because its product is misbranded, and because the name "Coca-Cola" is deceptive (*California Fig Syrup Co. v. Stearns* [C. C. A. 6], 73 Fed. 812, 816, 20 C. C. A. 22, 33 L. R. A. 56); but defendant took no proofs. A corporation cannot answer under oath, and even if its answer, when verified by an

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officer, is evidence under the equity rule, it is not available to prove an affirmative defense. *Seitz v. Mitchell*, 94 U. S. 580, 582, 24 L. Ed. 179; *Ritterbusch v. Atchison*, etc., Ry. (C. C. A. 8) 198 Fed. 46, 50. These matters must, therefore, be dismissed from consideration. And see *U. S. v. 40 Barrels*, etc. (D. C.) 191 Fed. 431.

The substantial question seems to be whether complainant has a remedy against defendant, or whether the remedy is confined to proceedings against that retail trade which is the immediate agent in deceiving the ultimate purchaser. That the defendant has planned and expected a benefit by the fraud so to be practiced, and that it has deliberately furnished to the dealers the material for practicing the fraud, with the expectation and desire that the material be so used, are perfectly plain—indeed, are hardly denied. The ultimate wrong here contemplated is clearly to be classified as unfair competition, within the definitions adopted by the Supreme Court and by this court (*Elgin*, etc., Co. v. *Illinois Watch Co.*, 179 U. S. 665, 674, 21 Sup. Ct. 270, 45 L. Ed. 365; *Merriam Co. v. Saalfeld*, 198 Fed. 369; *Everett Piano Co. v. Maus*, 200 Fed. 718, opinion this day filed); and complainant is entitled to such relief as a court of equity can give, unless merit can be found in the defense that the Gay-Ola Company had the right to make and sell the article which it did sell, and that it is not responsible for the fraud of its vendees.

(2) The interposition of equity in this class of cases rests upon the inadequacy of the remedy at law; and this inadequacy consists in the resulting multiplicity of suits, impossibility of computing indirect damages and probable irresponsibility of many wrongdoers. If these reasons lead to the issuing of an injunction against one of a large number of those who commit the final tort, even more do they indicate the necessity of an injunction against one who is conspiring or co-operating to cause a large number of such torts. Accordingly, we find it recognized by this court that, in a suit for unfair competition, it

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is not necessary to show that the immediate purchasers were deceived as to the origin of the goods; but even if they thoroughly understand that they are buying the counterfeit, and not the genuine, the manufacturer of the counterfeit will be enjoined from selling it to dealers with the purpose and expectation that it shall be used by the dealers to deceive the consumer. *Garett v. Garett* (C. C. A. 6) 78 Fed. 472, 476, 24 C. C. A. 173; *Royal Co. v. Royal*, 122 Fed. 337, 345, 58 C. C. A. 499. And see cases cited in Cyc., vol. 38, p. 778, notes 25 and 26; also *Kalem v. Harper*, 222 U. S. 55, 63, 32 Sup. Ct. 20, 56 L. Ed. 92. Under the principles on which these cases were decided, we are satisfied that an injunction must go against the defendant. There is no room for it to shift the blame to "tricky retailers," as in *Rathbone Co. v. Champion Co.*, 189 Fed. (C. C. A. 6) 26, 33, 110 C. C. A. 596, 37 L. R. A. (N. S.) 258; defendant is an accomplice, if not the principal, in the trick. With this conclusion established, it is obvious that the injunction should forbid all attempts directly or indirectly to encourage or induce the dealer to make the fraudulent substitution; but complainant also asks that the injunction extend to the use of barrels or kegs painted of the same color as complainant's, and to coloring the product itself with the same color, and to using any packages not plainly marked Gay-Ola. Whether the injunction should have this scope must be considered.

(3, 4) It is first to be observed that defendant is at the best on a narrow ground of legality. The name which it has adopted does not negative an intent to confuse. The product is identical, both in appearance and taste; and the form of script used in printing the "trade-mark" names is the same. Even if the use of each of these items of similarity was lawful, when accompanied by good faith and no intent to deceive, they put the product near that dividing line where good or bad faith is the criterion, and their presence puts upon the user a burden of care to see that deception does not naturally result. Conversely,

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when we find, as a fact, from the other conduct of the defendant, that the underlying intent is to perpetrate a fraud upon the consumer, this intent must color the accompanying acts, and some which otherwise might be innocent become guilty. So here. The red color used by complainant on its barrels and kegs is not a color which it discovered, or to which it had any abstract monopoly; but this color has long been used by complainant in a way that was exclusive in this trade. No other manufacturer of analogous or competing drinks uses that color of package, and its adoption by defendant is one of the constituent parts of defendant's scheme of fraud. So, too, with defendant's failure to mark its packages with anything to indicate the place of manufacture. Ordinarily a man may mark his goods, or not, as he pleases; but when he has his marks and labels, which he uses on occasions, and can have no motive for sending out unmarked packages except to aid in a fraudulent substitution, the act, otherwise permissible, becomes forbidden.

The question remains whether the injunction should go to the extent of forbidding defendant to sell Gay-Ola with the identical color it now has; that is, to forbid its sale unless colored so as to distinguish it from Coca-Cola. Defendant contends that such a prohibition is inconsistent with its legal right to make and sell an article which is in fact exactly like Coca-Cola. This contention seems unpersuasive in view of defendant's pleadings. In its answer it has abandoned the claim of its advertising literature that Gay-Ola is made exactly according to the Coca-Cola formula, and urges that its product is a different and better compound. It says that it has improved upon the formula of Coca-Cola, while eliminating one of the elements, and that its product is "greatly superior" to Coca-Cola. It thus destroys a considerable part of the foundation upon which rests its claimed right to adopt a color which will be deceptive; but we pass by this consideration.

The record justifies the conclusion that the color

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is "nonfunctional" to use the phraseology of the patent law. The bill alleges that Gay-Ola is "artificially and unnecessarily" colored so as to look exactly like Coca-Cola. The answer denies this in terms; but it goes on to say that the color is produced by caramel, which is in universal use for coloring purposes, and is used by complainant for coloring Coca-Cola. There is here no claim that caramel serves any other purpose in either compound, except merely to give color, and saying that it is one of the "component elements," as one of the witnesses does, is saying nothing more. It follows that the adoption, not only of caramel, was for the main and primary purpose of making the two articles look just alike. In this connection it appears that there is a great variety of coloring materials open to the use of any manufacturer, and selections from which are used by other manufacturers.

The record also requires the conclusion that defendant's business had a substantial basis in this contemplated fraud. Doubtless it intended to try to make a reputation and business for Gay-Ola on its own merits in certain quarters, and perhaps eventually in a general way; but it is clear that in the meantime, and wherever it could, and as the easiest way of getting a large business, it intended to have its product sold as and for Coca-Cola. Under these circumstances we need not consider what the rule would be if the color was the incidental result of an ingredient used for some other purpose, nor yet what the rule would be if the defendant had adopted even a wholly unnecessary identity in color in connection with a good-faith effort to sell its own goods on their own merits. This court has not yet said that a case of fraudulent competition can be made out solely by proof of identity in a nonfunctional particular. *Rathbone Co. v. Champion, supra*; *Hilker Mop Co. v. U. S. Mop Co.*, 191 Fed. 613, 112 C. C. A. 176. This case is not even one of imitating matters of appearance in an article of common manufacture, like furniture. *Globe-Wernicke Co. v. Macey Co.*, 119 Fed. 696, 704, 56 C. C.

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A. 304. We rest our conclusion here upon the fact that the color was adopted in part as a means of aiding the contemplated fraud, and that, if its adoption was also in part innocent, there is here a confusion caused by defendant; that the burden is therefore upon defendant to see to it that ultimate fraud does not result from this confusion; and that, so far as defendant cannot safeguard this result, it may not use the color. There is here marked—indeed close—analogy to the rule of *Westinghouse Co. v. Wagner Co.*, 225 U. S. 604, 32 Sup. Ct. 691, 56 L. Ed. 1222, and to the rule which requires an article which is likely to deceive as to its origin to be distinctly tagged with the name of the real producer. *Merriam v. Saalfeld*, *supra*. It goes without saying that this tag should be in form adapted to reach the notice of the final purchaser.

As to the bottling part of the output, defendant could apparently provide reasonably efficient means of notice, and so probably prevent deception by seeing to it that all the bottles were stamped and labeled prominently with the name of its product. As to the soda fountain part of the output, we do not at present see how deception could be efficiently prevented, save by giving the product a nondeceptive color, although some other satisfactory means may be brought to the attention of the court below. The defendant should be enjoined from selling Gay-Ola of a color the same as or substantially similar to Coca-Cola, unless and in so far as upon settlement of the decree below means may be provided by which the ultimate consumer will be fairly advised that he is not getting complainant's Coca-Cola, but is getting something else.

(5) Two matters of affirmative defense require mention. Jurisdiction in this case is founded on diverse citizenship, the complainant being a Georgia corporation and the defendant a Tennessee corporation. Complainant has a contract with the Coca-Cola Bottling Company, of Chattanooga, a Tennessee corporation, by which complainant's entire product intended

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for bottling purposes in several states, including Tennessee, is sold to this Tennessee corporation, or to other Coca-Cola bottling companies scattered over the contract territory, and which are organized as subsidiaries to the Tennessee corporation, and so it is said that the injury done by defendant in inducing these subsidiary bottling companies to substitute Gay-Ola for Coca-Cola is an injury to the Tennessee corporation, and it must be made a party, whereby the court will be ousted of its jurisdiction. It is true that the interests of the Tennessee corporation may be affected by this litigation, and it may well be that, under the special circumstances appearing by the record, the Tennessee corporation would be a proper party. It does not follow that it is a necessary party. If the fraudulent substitution of Gay-Ola for Coca-Cola is effected by these subsidiary bottling companies, and thereby the deception of the purchasing public is consummated, complainant suffers, not only the direct loss of its sale, but the indirect damage, through loss of reputation and business, which may follow the substitution. These things give complainant a direct and independent interest in preventing the fraud. The fact that the Chattanooga Bottling Company has, for itself and its subsidiaries, the exclusive right to handle all of complainant's product which is devoted to bottling purposes, does not differentiate the case from the ordinary one of manufacturer, jobber and dealer. The manufacturer cannot be unable to act for the protection of his goods in the retail field, unless he acts through or jointly with the jobber.

(6) The other matter is this: All the subsidiary Coca-Cola Bottling Companies act in their respective localities under identical contracts with the Chattanooga Bottling Company, which contracts have certain exclusive and price-restricting features which are claimed to make them obnoxious to the Sherman Law; and it is said that the rule of *Miles Medicine Co. v. Parks*, 220 U. S. 373, 408, 31 Sup. Ct. 376, 55 L. Ed. 502, applies to this situation and requires the complaint

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to be dismissed. Without considering these premises, it is sufficient to say that we do not so understand that case. It holds that the manufacturer may not have the aid of equity to enforce the very terms of the contract system there involved; it does not hold that the remedies of the Dr. Miles Medical Company to protect itself and the public from fraudulent competition would be destroyed or abridged because of the existence of these contract restrictions; and we see no reason why such a system of exclusive contracts, not tending to establish a monopoly, except in connection with that lawful measure of exclusion which is inherent in a trade-mark and an established business, should have the effect to deny to a complainant that equitable remedy to which he otherwise would be entitled. Indeed, it has been held that complainant's participation in a violation of the Sherman Act (Act July 2, 1890, c. 647, 26 Stat. 209 [U. S. Comp. St. 1901, p. 3200]) does not destroy his right to protection against infringement on trade rights. *Brown Saddle Co. v. Troxel* (C. C.) 140 Fed. 412; *Weyman-Bruton Co. v. Old Indian Snuff Mills* (D. C.) 197 Fed. 1015.

The decree below must be *reversed*, and a decree should be entered in accordance with the prayer of the bill and this opinion.

The appellant will recover costs of both courts.

IN THE CIRCUIT COURT OF APPEALS,
SIXTH CIRCUIT

211 FEDERAL 942

Nos. 2542, 2543—IN EQUITY

THE COCA-COLA COMPANY

v.

THE GAY-OLA COMPANY.

THE GAY-OLA COMPANY

v.

THE COCA-COLA COMPANY.

1. TRADE-MARKS AND TRADE-NAMES (Sec. 100) — UNLAWFUL COMPETITION — SALE OF DEFENDANT'S PRODUCT—METHOD.

Where defendant put out a soda-water syrup in unlawful competition with Coca-Cola, it was not entitled to sell its syrup in bulk to bottlers on their agreement to put it up only in such bottles as would cause it to reach the ultimate consumer in a form permitted by a decree in a suit for unlawful competition; complainant being entitled to restrain the marketing of defendant's product except through such branches or agencies as would charge defendant with their acts.

(Unfair competition, see notes to *Scheuer v. Muller*, 20 C. C. A. 165; *Lare v. Harper & Bros.*, 30 C. C. A. 376.)

2. TRADE-MARKS AND TRADE-NAMES (Sec. 100)—UNLAWFUL COMPETITION.

In a suit for unlawful competition, it is proper for the court under certain circumstances in settling a decree forbidding unfair competition to prescribe that certain forms may be used, and if used will not constitute prohibited fraud.

THE COCA-COLA COMPANY

Appeals from the District Court of the United States for the Western District of Tennessee. JOHN E. McCALL, Judge.

Suit in equity by The Coca-Cola Company against the Gay-Ola Company. From a decree in favor of complainant in a suit for unlawful competition, both parties appeal. *Modified.*

W. D. Thomson and Candler, Thomson & Hirsch, all of Atlanta, Ga., and *Lehman, Gates & Martin*, of Memphis, Tenn., for Coca-Cola Co.

Leo Goodman and Hirsh & Goodman, all of Memphis, Tenn., for Gay-Ola Co.

Before WARRINGTON, KNAPPER, and DENISON, Circuit Judges.

Per Curiam. Upon settlement of a decree in the district court pursuant to our opinion in Coca-Cola Co. v. Gay-Ola Co., 200 Fed. 720, 119 C. C. A. 164, the questions arising were so disposed of as to cause both parties to appeal. This makes it necessary for us to consider and apply our former opinion.

The Gay-Ola Company offered two plans by which it thought its syrup might be kept in bulk at soda fountains, and there prepared in glasses and served, without too much danger that it would be palmed off for Coca-Cola. We agree with the district judge that neither plan would be efficient, or within the fair meaning of our opinion. Upon the appeal of the Gay-Ola Company, the action below must be affirmed.

(1) The Gay-Ola Company claims it should be allowed to sell its syrup in bulk to bottlers in different parts of the country who will agree with it to put up the syrup only in such bottles as will cause it to reach the ultimate consumer in the form permitted by our opinion.

The Coca-Cola Company insists that this would

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result in evasion of the intended restriction, since the bottlers could then use or sell the syrup as they pleased. We cannot see how it is possible for this syrup, carrying what on the record must be called the guilty color, to be sold by the Gay-Ola Company, so that it loses title and control, and for the court at the same time to retain practical power to enforce against the Gay-Ola Company the existing restriction upon the ultimate form of sale.

Obviously, by establishing its own bottling works in different places, or by causing the bottling to be done by its agent, whose acts are its acts, it can get its product on the market in bottled form; if such branches or agencies are impracticable, and the Gay-Ola Company must either change the color or abandon the business, this result must be charged to its fraudulent inception—to a “congenital defect.” We think the decree should absolutely prohibit sales by the Gay-Ola Company unless in the form prescribed for ultimate use.

(2) The Gay-Ola Company presented a package which it proposed to use for its bottled product, in order to differentiate from the Coca-Cola bottled product, and asked the district judge to approve and sanction this form by a paragraph in the decree. He did so. The Coca-Cola Company appeals from this action, and insists that the court cannot, in settling a decree forbidding unfair competition, prescribe that certain forms may be used, and will not constitute the prohibited fraud. This seems to be held in the Seventh Circuit of Appeals. *Hires v. Consumer's Co.*, 100 Fed. 809, 41 C. C. A. 71; *Williams v. Mitchell*, 106 Fed. 168, 45 C. C. A. 265; *Sterling Remedy Co. v. Spermine Med. Co.*, 112 Fed. 1,000, 50 C. C. A. 657. That we are not within the issues seems hardly accurate, because the pleading issues in such suits are usually general and broad enough to include all the specific forms of the device which have been or may be used. It is clear that there are cases where the problem presented by the new form for which

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authority is asked will be so far away from the questions which the court has considered, and which proofs cover, that it ought not to be solved without a new suit or a new proceeding; but there are many cases where the court will be as ready as it ever can be to decide such a question; and to refuse to do so, and compel a new suit, is unnecessarily to prolong uncertainty and litigation. Whether a given case falls within one or the other class, or whether opportunity for additional and summary hearing will properly take the case from the second class into the first, can safely be left to the discretion of the court. The practice condemned in the Seventh Circuit was followed by Judge Coxe at Circuit (*Carlsbad v. Schultz* [C. C.] 78 Fed. 469, 472); and it seems to us equivalent to what we think is very common in unfair competition cases, i. e., providing that defendant's publication or article shall contain, or shall be enjoined unless it does contain a certain notice or label, for this amounts to saying that if it does contain prescribed notice it will not violate the decree. This has been done (if not more generally) in the Second Circuit (*Waterman Co. v. Modern Co.* [C. C. A.] 197 Fed. 534, 535, 117 C. C. A. 30); in the First Circuit (*Merriam Co. v. Ogilvie* [C. C. A.] 170 Fed. 167, 168, 95 C. C. A. 423); and in this court (*Merriam v. Saalfield*, 198 Fed. 369, 378, 117 C. C. A. 245).

The question whether the court below rightly approved the form of bottle then presented needs no discussion. The Gay-Ola Company does not now insist upon the one then authorized, but in open court before us presented another form, which counsel for the Coca-Cola Company accepted as satisfactory. We will effectuate their agreement by directing that the decree authorize this new form, instead of the form approved by the district judge. The decree below will be re-entered in the same form it now is, excepting that the following two paragraphs will be substituted for the corresponding paragraphs in the entry appealed from:

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“It is further *ordered, adjudged, and decreed* that the said defendant, its directors, officers, agents, servants, employes and assigns, and each and every one of them, be and they are hereby *perpetually enjoined, restrained and prohibited* from selling, or disposing of Gay-Ola of the same or substantially similar color to Coca-Cola, except when the same is sold by it in bottles, receptacles, or packages marked or labeled prominently with the name of the defendant’s product and designed and intended to be sold and delivered to the ultimate consumer in said original bottle, receptacle, or package, with said mark or label still remaining thereon.

“It is further *ordered, adjudged and decreed* that the proposed bottling package presented to the Circuit Court of Appeals upon its hearing of cases No. 2542 and No. 2543 does constitute a package by which the ultimate consumer will be fairly advised that he is not getting Coca-Cola; and that the sale of Gay-Ola in such package to the ultimate consumer, or to others in such package for sale to the ultimate consumer thereof, will not constitute any violation of this decree. The bottling package so authorized is a long-necked clear-glass bottle having two complete annular ribs and two partially complete such ribs blown in the body of the bottle; and having the word ‘Gay-Ola’ in large capital letters blown in the shoulder thereof, and the words ‘The Improved Cola’ in the body thereof; being also provided with a cap or crown on which the words ‘Gay-Ola. It’s Better,’ are printed in red. This package is further identified by filing one of the same as an exhibit in this cause, and by front and rear photographs thereof attached to this decree, and made a part hereof.”

Neither party will recover costs against the other.

SUPREME COURT OF THE UNITED STATES

229 U. S. 614

No. 1020

THE GAY-OLA COMPANY, Petitioner,
v.
THE COCA-COLA COMPANY, Respondent.

Petition for a Writ of Certiorari to the United States
Circuit Court of Appeals for the Sixth Circuit.

Denied on April 21, 1913.

MR. FREDERICK S. TYLER,
For Petitioner.

MESSRS. W. D. THOMSON and HAROLD HIRSCH,
For Respondent.

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF TENNESSEE,
WESTERN DIVISION

In The District Court of the United States, within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May Term, A. D. 1914, at the United States Court House in the City of Memphis, in said District, on to wit: the 4th day of July, A. D. 1914, in the following cause, to wit:

THE GAY-OLA COMPANY,	}	No. 662.
v.		
THE COCA-COLA COMPANY.		

DECREE ON MANDATE.

This cause came on this day to be heard upon the motion of the complainant to enter a decree in accord with the mandate of the United States Circuit Court of Appeals, in this cause bearing date the 24th day of April, 1914, which said mandate has heretofore been entered of record and is now recorded in Minute Book 1, at pages 211 and 212.

Now, Therefore, in obedience to the said mandate, and in compliance with the directions therein contained, and the opinion of the said Circuit Court of Appeals herein, it is hereby *ordered, adjudged and decreed* that the said final decree of this court entered herein on the 8th day of July, 1913, in Minute Book 1, at pages 69 to 71, be and the same is hereby

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modified, and there is eliminated therefrom and expunged therefrom and for naught held so much of the decree as is in the words and figures following, to wit:

“It is further *ordered, adjudged and decreed* that the said defendant, its directors, officers, agents, servants, employes and assigns, and each and every of them, be and they are hereby *perpetually enjoined, restrained and prohibited* from selling or disposing of Gay-Ola of the same or substantially similar color to Coca-Cola except when the same is sold in bottles, receptacles or packages, marked or labeled prominently with the name of defendant’s product, and designed and intended to be sold and delivered to the ultimate consumer in said original bottle, receptacle or package, with said mark or label still remaining thereon.”

“It is further *ordered, adjudged and decreed* that the amber-colored, long-necked bottle, exhibited by the defendant Gay-Ola Company in open Court on this day, upon the hearing of the motion for the entry of the decree on the mandate, said bottle has the words ‘Gay-Ola. It’s better’ blown prominently into the bottle at the shoulder thereof, and the same words printed in red on the crown or cap which fits over the mouth of the bottle is in the opinion of the Court a sufficient stamping or labeling thereof within the meaning and intent of this decree, to which part of the adjudication the complainant there and then, and does now and here except.”

It is further *ordered, adjudged and decreed* that, pursuant to the direction and mandate of the said United States Circuit Court of Appeals herein, the said decree as modified be and the same is hereby re-entered and is made the decree of this Court in said cause, and that this court does now proceed to adjudge and decree, and does order, adjudge and decree as follows, to wit:

“It is further *ordered, adjudged and decreed*

that the defendant, its directors, officers, agents, servants and employes, and assigns, and each and every of them, be and they are hereby *perpetually enjoined, restrained and prohibited* from in any-wise, manner or way, directly or indirectly, conspiring with any customer of complainant, or other person, whether proprietor of a soda fountain or bottler, for the purpose of defrauding complainant and from suggesting, intimating or proposing to or agreeing with any such proprietor of a soda fountain, or bottler or other customer of complainant, or any other person or persons whatsoever that they or any one or more of them, may without fear of detection, substitute the product or goods of the defendant for the product or goods of complainant; or from in any manner inducing or attempting directly or indirectly, to induce or encourage any bottler, soda fountain proprietor, or any other person whatsoever to fraudulently substitute defendant's product for that of complainant, or to cause the same to be so fraudulently substituted, or from soliciting or inducing any one or more of the customers of complainant or any other person or persons whatsoever, to purchase from defendant its syrup with the idea, purpose or intention of substituting defendant's syrup for the genuine Coca-Cola, by any promise of secrecy in the entry of orders therefor, or in the delivery of said product."

"It is further *ordered, adjudged and decreed* that the said defendant, its directors, officers, agents, servants, employes and assigns, and each and every one of them, be and they are hereby *perpetually enjoined, restrained and prohibited* from selling, or disposing of Gay-Ola of the same or substantially similar color to Coca-Cola except when the same is sold by it in bottles, receptacle or packages marked or labeled prominently with the name of the defendant's product and designed

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and intended to be sold and delivered to the ultimate consumer in said original bottle, receptacle or package, with said mark or label still remaining thereon."

"And it is further *ordered, adjudged and decreed* that the proposed bottling package presented to the Circuit Court of Appeals upon its hearing of cases No. 2542 and 2543 does constitute a package by which the ultimate consumer will be fairly advised that he is not getting Coca-Cola; and that the sale of Gay-Ola in such package to the ultimate consumer, or to others in such package for sale to the ultimate consumer thereof, will not constitute any violation of this decree. The bottling package so authorized is a long-necked, clear-glass bottle, having two complete annular ribs and two partially complete such ribs blown in the body of the bottle; and having the words 'Gay-Ola' in large capital letters blown in the shoulder thereof and the words 'The Improved Cola' in the body thereof; being also provided with a cap or crown on which the words 'Gay-Ola. It's Better,' are printed in red. This package is further identified by filing one of the same as an exhibit in this cause and by front and rear photographs thereof attached to this decree, and made a part hereof."

"It is further *ordered, adjudged and decreed* that the said party, and each and all of them, are further *perpetually enjoined, restrained and prohibited* from painting any barrels or kegs in which the product of the defendant is delivered or shipped, a dark red color similar to that heretofore and now employed by complainant in the painting of its kegs and barrels, or from shipping or delivering any of defendant's said product in any barrels or kegs so painted or colored as to be similar in appearance to those of complainant."

"It is further *ordered* that the complainant have, and recover of defendant all costs expended

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in this cause and in addition thereto, costs expended in the United States Circuit Court of Appeals which latter costs are taxed at \$377.66, which were the costs awarded to complainant upon the first appeal of this cause, and all of which said costs have been paid by the defendant Gay-Ola Co., wherefore the said judgment for costs is satisfied and no execution will issue thereon."

It is further *ordered and adjudged* that each of the parties hereto will pay all of their own costs expended in the United States Circuit Court of Appeals in their several respective appeals herein, which costs are taxed as to the complainant Coca-Cola Company in the sum of \$——, and which costs are taxed as to the defendant in the sum of \$——, and for the costs so taxed execution may issue as at law.

"It is further *ordered, adjudged and decreed* that this cause be and it is hereby referred to Frank S. Elgin, of Memphis, Tennessee, as Special Master, who will ascertain from the proof now on file and any that may be submitted:

"1st. What if any profits have been received by the defendant's unlawful, unfair, inequitable and fraudulent conduct and competition.

"2nd. What damages, if any, complainant suffered by reason of defendant's unlawful, unfair, inequitable and fraudulent conduct and competition.

"3rd. The amount of goods or product sold by defendant The Gay-Ola Company from the date of its commencement in business to this date.

"4th. What profits, if any, were derived by defendant The Gay-Ola Company, as a result of sales made by it and found by the Master in accordance with the preceding direction."

It is further *ordered, adjudged and decreed* that the Master proceed to report his findings to this Court.

Enter this:

McCALL, Judge.

UNITED STATES OF AMERICA,
SIXTH JUDICIAL CIRCUIT

DISTRICT COURT OF THE UNITED STATES,
WESTERN DISTRICT OF TENNESSEE

I, J. SAM JOHNSON, Clerk of the District Court of the United States, for the Western District of Tennessee, do hereby certify that the papers hereto attached, are a full, true, perfect and correct copy of the original decree on mandate, entered July 4, 1914, as the same now appears of record and upon the files in my offices, in the following cause, to wit:

THE COCA-COLA COMPANY, }
 v. } No. 662.
THE GAY-OLA COMPANY. }

In Testimony Whereof, I have hereunto written my name and affixed the Seal of said Court, at my office in the City of Memphis, Tennessee, this 25th day of August, A. D. 1922, and of the Independence of the United States, the 147th Year.

J. SAM JOHNSON, Clerk.

AUTHENTICATION.

I, J. W. ROSS, a Judge of said Court, do hereby certify that J. SAM JOHNSON, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, Clerk of said Court and that his attestation is in due form.

J. W. ROSS,
Judge of the District Court of
the United States for the
District aforesaid.



Coca-Cola
TRADE MARK
REGISTERED

FLETCHER'S
COCA COLA

IN THE CIRCUIT COURT
OF APPEALS
SIXTH CIRCUIT

215 FEDERAL 527

Nos. 2439, 2440—JUNE 13, 1914

NASHVILLE SYRUP COMPANY,
v.
THE COCA-COLA COMPANY.

THE COCA-COLA COMPANY,
v.
NASHVILLE SYRUP COMPANY.

Suit in Equity by The Coca-Cola Company against
the Nashville Syrup Company. From the
decree both parties appeal.

J. B. SIZER, Chattanooga, Tennessee,
HAROLD HIRSCH, Atlanta, Georgia,
For Plaintiff.

PERKINS BAXTER, Nashville, Tennessee,
B. W. BRADFORD, Washington, D. C.,
For Defendant.

NASHVILLE SYRUP COMPANY

IN THE CIRCUIT COURT OF APPEALS,
SIXTH CIRCUIT

215 FEDERAL 527

Nos. 2439, 2440—JUNE 13, 1914

NASHVILLE SYRUP COMPANY,

v.

THE COCA-COLA COMPANY.

THE COCA-COLA COMPANY,

v.

NASHVILLE SYRUP COMPANY.

1. TRADE-MARKS AND TRADE-NAMES (Sec. 45)—DESCRIPTIVE WORDS—EFFECT OF REGISTRATION.

The federal trade-mark statute does not directly operate to grant a monopoly to one who rightfully registers a descriptive or geographical word under the 10-year clause of Act Feb. 20, 1905, c. 592 (U. S. Comp. St. Supp. 1911, p. 1461), Sec. 5, but removes from words which had been exclusively used as a mark in interstate commerce for 10 years the bar or disability caused by their descriptive or geographical character, and makes them, after their registration, subject to exclusive appropriation with the same effect, in the main, as if the disability had never existed.

2. TRADE-MARKS AND TRADE-NAMES (Sec. 59)—INFRINGEMENT—"COCA-COLA."

The name Coca-Cola duly registered as a trade-mark for a syrup used as a basis for carbonated drinks, and which had by more than 10 years exclusive use prior to 1905 become the distinctive name under which complainants' product was known, HELD infringed by the name "Fletcher's Coca-Cola" used on a similar product.

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3. TRADE-MARKS AND TRADE-NAMES (Sec. 22)—VALIDITY—DECEPTIVE NAMES.

Whether a claimed trade-mark is so descriptive of something else as to be deceptive must be decided as of the time of its adoption.

4. TRADE-MARKS AND TRADE-NAMES (Sec. 22)—VALIDITY—DECEPTIVE NAMES.

The name "Coca-Cola" as applied to a flavoring syrup for carbonated drinks, containing about 2 per cent of a compound made from coca leaves and cola nuts, HELD not so substantially and really deceptive as to invalidate it as a trade-mark under the 10-year clause of the act of 1905.

5. TRADE-MARKS AND TRADE-NAMES (Sec. 59)—INFRINGEMENT.

Where a name has been exclusively used to designate the product of a particular manufacturer for so long a time as to have become identified with it in the minds of purchasers and to be a valid trade-mark it cannot be used by another on a similar product merely because ingredients are used in such other product which make the name in a sense descriptive of it.

6. TRADE-MARKS AND TRADE-NAMES (Sec. 98)—SUIT FOR INFRINGEMENT—ACCOUNTING FOR PROFITS.

On an accounting for profits for infringement of a trade-mark by a *bona fide* corporation, defendant is entitled to credit for the salary paid its manager, who was a minority stockholder only, as a part of its operating expenses.

7. APPEAL AND ERROR (Sec. 339)—TIME FOR APPEAL—SUIT FOR INFRINGEMENT OF TRADE-MARK.

Where an interlocutory decree in favor of complainant was entered in a suit for infringement of a trade-mark, directing a reference for an accounting, a subsequent decree entered on the report of the master, whether or not it refers to the interlocutory decree in terms, has the effect of reaffirming it and rendering it final, and an appeal may be taken by the defendant at any time within the statutory time after entry of such final decree on which decision embodied in the interlocutory decree may be reviewed. The fact that the appeal purports to be from the interlocutory decree, and that steps were taken therefor before such decree became final, which were perfected afterwards, is not a fatal irregularity.

Appeals from the District Court of the United States for the Middle District of Tennessee. EDWARD T. SANFORD, Judge.

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Suit in equity by The Coca-Cola Company against the Nashville Syrup Company. From the decree both parties appeal. *Affirmed.*

(For opinion below, see 200 Fed. 157.)

Coca is a South American shrub, from the leaves of which cocaine, among other substances, is obtained; the cola tree grows in Africa, and from its nuts caffeine may be extracted. The use of these leaves and these nuts by the natives in their respective countries, and for the supposed stimulating qualities, had long been known in this country, and before 1887 extracts respectively from coca leaves and from cola nuts had found a place in the pharmacopœia. There was little popular knowledge concerning them. The extracts were used only by druggists in compounding medicine. In 1887 Pemberton, an Atlanta druggist, registered in the Patent Office a label for what he called "Coca-Cola Syrup and Extract." The plaintiff below, the Coca-Cola Company, was organized as a corporation in 1892, and acquired Pemberton's formula and label. Since that time, it has continuously manufactured and sold a syrup under the name, "Coca-Cola," and, used as a basis for carbonated drinks, the syrup, under this name, has had a large sale in all parts of the country. In 1893 the Coca-Cola Company (herein called plaintiff) registered the name "Coca-Cola" as a trade-mark, and again in October of 1905, and pursuant to the act of February 20, 1905, the name was registered by plaintiff as a trade-mark under the 10-year proviso of that act. Plaintiff enjoyed the exclusive use of the name from 1892 until 1910. In that year, J. D. Fletcher, now the active manager of the Nashville Syrup Company (herein called defendant), became interested with others in the manufacture of a somewhat similar syrup being sold under the name "Murfe's Cola." Later in that year they changed the name of their product to "Murfe's

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Coca-Cola," and shortly afterwards, Mr. Fletcher became sole owner of the business, and the product was named "Fletcher's Coca-Cola," and has been sold by him and his successor, the Nashville Syrup Company, under that name. The bill of complaint herein claimed for plaintiff a common-law trade-mark in the name, and also claimed trade-mark rights by virtue of the registration under the act of 1905. It also alleged that the words of the name, if they ever indicated anything other than plaintiff's product, had acquired a secondary meaning limited to that article, and that defendant was engaged in unfair competition. Jurisdiction sufficiently depended on diverse citizenship.

On the usual so-called final hearing the District Judge concluded that plaintiff had a valid statutory trade-mark under the act of 1905, and that it had been infringed, and accordingly ordered an injunction and a reference to ascertain the damages (200 Fed. 153, 157). The master reported his finding of damages, but defendant's exception was sustained and a decree was entered finding no damages. The defendant appealed from the decree for injunction, and plaintiff appealed because it failed to recover damages.

J. B. Sizer, of Chattanooga, Tenn., and *Harold Hirsch*, of Atlanta, Ga., for plaintiff.

Perkins Baxter, of Nashville, Tenn., and *D. W. Bradford*, of Washington, D. C., for defendant.

Before WARRINGTON, KNAPPEN, and DENISON, Circuit Judges.

DENISON, Circuit Judge (after stating the facts as above):

(1) 1. Passing, for the present, without deciding, the question whether the name Coca-Cola was, in 1887 or in 1892, so far descriptive of the article as to be incapable of appropriation as a common-law trade-mark, and passing, also without deciding, the question

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whether the name, if primarily descriptive, had, before suit was brought in 1910, acquired a secondary meaning, we come to the effect of the registration under the act of 1905. The broad questions on which defendant relied concerning the effect of this act have been set at rest against defendant's contention, by the decision of the Supreme Court in *Davids Co. v. Davids*, 233 U. S. 461, 34 Sup. Ct. 648, 58 L. Ed. 1046. In view of the settled rule that the federal trade-mark statute does not create any exclusive right, as the patent statute does, but only recognizes a right which has been already acquired by exclusive appropriation, and then furnishes evidence and remedies (*Trade-Mark Cases*, 100 U. S. 82, 25 L. Ed. 550; *Hopkins on Trade-Marks*, Sec. 27; *Hesseltine's Law of Trade-Marks*, p. 139), we do not regard the decision in the *Davids Case* as holding that the statute directly operates to grant a monopoly to one who rightfully registers under the ten-year clause a descriptive or geographical word. We take it as holding that the statute was not intended to permit, under this clause, an ineffective and useless registration, and so, in effect, holding that the statute removed from descriptive words which had been exclusively used as a mark in interstate commerce for 10 years the bar or disability caused by their descriptive character, and made them, after that probation, subject to exclusive appropriation with the same effect, in the main, as if the disability had never existed. Since the statute relates primarily to registration, it may well be that the disability continues until registration, somewhat retroactively, removes it; that is not now important. Neither is it important at present to know the exact distinctions between the manufacturer's rights formerly existing under the secondary meaning theory and those now existing under the statute. Since it appears that plaintiff had enjoyed the exclusive use of the name "Coca-Cola" for more than 10 years before 1905, and that there was due registration under the act of 1905, it follows that plaintiff's exclusive rights

as a trade-mark owner and as defined in the Davids Case, are established.

Whether any exclusive rights which, in an essential part, depend on this statute can extend to the regulation of strictly intrastate commerce, or whether the effect must be limited to the field where Congress had power to act, is an interesting question, which is only suggested, but not presented, by this record.

It is not raised by assignment of error by the briefs. We, therefore, give it no consideration.

(2) 2. We think the infringement sufficiently appears. Here, also, the Davids case is instructive. The specific form in which the mark was registered in that case was not considered important; and so it cannot be here controlling, whether the words "Coca-Cola" are with or without a hyphen, or are in script or in plain letters. Neither is infringement avoided because defendant marks its bottles "Fletcher's Coca-Cola." Not only does this qualification in the name fail effectively to reach the ultimate consumer (*Coca-Cola v. Gay-Ola Co.*, 200 Fed. 720, 119 C. C. A. 164, and Fed. 942, 128 C. C. A. 440), but a trade-mark right which could be so avoided would be of no value. Indeed, even under the secondary meaning theory, and without the aid of the statute, such marking would not sufficiently differentiate. *Merriam v. Ogilvie*, 170 Fed. 167, 95 C. C. A. 423, and cases cited on page 168; *Davids Co. v. Davids*, *supra*. A case may arise where the words registered under the statute are so wholly and so merely descriptive and so unfit to carry an arbitrary meaning indicating registrant's product only that the use of the words coupled with defendant's name as manufacturer would not infringe; but this is not that case.

The words here involved were, if fairly "descriptive" at all, not purely descriptive, and by 10 years' exclusive use they had become the distinctive appellation of plaintiff's product. To permit defendant to use them in connection with his own name is not to avoid or mitigate the wrong, but is rather an

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aggravation, because of the false implication that plaintiff has parted with the exclusive right. *Jacobs v. Beecham*, 221 U. S. 263, 272, 31 Sup. Ct. 555, 55 L. Ed. 729.

3. There remains the question whether the mark is deceptive. Defendant does not expressly make this point, but it is so bound up with the questions of how merely descriptive the words are, and whether the same words as used by defendant are only the rightful name of its product, that it must be decided. The act of 1905 makes no exception in this respect, but we assume that if the registered words clearly carried deception, and if their use really represented to the purchasers that the article was something essentially different from the thing which they actually received, the courts would not enforce any exclusive rights under such registration, both because plaintiff would come into court with unclean hands (*California Co. v. Stearns*, 73 Fed. 812, 816, 20 C. C. A. 22, 33 L. R. A. 56), and because such words could not be within the fair contemplation of the act, when it refers to "any mark * * * which was in actual and exclusive use as a trade-mark," etc. The inquiry whether the mark is deceptive and misleading is not dissimilar to the question whether the same words constitute the distinctive name of another article, which question we have considered in our opinion in *United States v. Coca-Cola Co.*, 215 Fed. 535, this day filed; but there may be some such special force in the words "distinctive name" found in the Pure Food Law that a mark might be thought deceptive or misleading even though it was not the "distinctive name of another article." Hence, the point requires, in this case, further consideration.

The argument is that the use of the name, "Coca-Cola," implies to the public that the syrup is composed mainly or in essential part of the coca leaves and the cola nut; and that this is not true. The fact is that one of the elements in the composition of the syrup is itself a compound made from coca leaves and

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cola nuts. This element becomes a flavor for the complete syrup, and is said to impart to it aroma and taste characteristic of both. This flavoring element is not in large quantity (less than 2 per cent), but it is impossible to say that it does not have appreciable effect upon the compound. The question then is whether the use of the words is a representation to the public that the syrup contains any more of coca or of cola than it really does contain.

(3) We think it clear that whether the claimed trade-mark is so descriptive of something else as to be deceptive must be decided at the time of adoption. It cannot be that rights once lawfully acquired by exclusive appropriation can be defeated by subsequent progress of public knowledge regarding some other substance of similar name. It is undisputed that during the period shortly after 1892, while this name was coming into public knowledge in connection with plaintiff's product, little or nothing was popularly known about either coca leaves or cola nuts, although existing technical or cyclopedic publications gave information. It is not important whether Pemberton's original form, "Coca-Cola Syrup and Extract," was so descriptive as to be deceptive if applied to a compound not composed mainly of these ingredients. The name in which trade-mark rights have been acquired is the compound name "Coca-Cola," and this name, may not, for all purposes, be the same as if it was "Extract of Coca and Cola."

Neither of these words alone had any absolute complete meaning, but when the words were put together to make the compound term, the ambiguity of meaning was intensified. It coca was spoken of, the reference might be to the leaves, or to a decoction or to an extract; "cola" might refer to the nuts or to a powder or to a paste or a fluid; and so, when the public first saw the name "Coca-Cola," it could not know, as we said in the accompanying case, whether the substance was medicine, food, or drink, or whether it was intended to swallow, smoke, or chew. One who

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had all the existing available information could only infer that the new substance, whatever it was, had some connection with these two foreign things. The case would be somewhat different if each of the two named elements was itself definite and certain, but neither is. To illustrate by more common substances: Sage is a shrub, used in various ways; the almond is a nut, eaten raw or prepared in numerous methods. The compound name "Sage-Almond," as a label, would convey a very indefinite idea, if any, as to what would be found when the package was opened; and, if we assume that "Sage-Almond" turned out to be a drink in connection with which sage leaves and almonds had been used, we have, in this illustration, a close analogy to Coca-Cola; yet this name, applied to a soda fountain beverage, would not deceive the public into supposing that it contained all the virtues of sage tea and all of the nourishment of the almond nut meats. Such an article could honestly enough carry the supposed name "Sage-Almond," and after 20 years' exclusive use of the name it would not still be common property. A newcomer might rightfully sell (e. g.) "Sage Tea with Almond Flavor"; he might not take the peculiar, precise, and really arbitrary compound name.

Plaintiff's counsel say, and so far as we can see accurately say:

"The use of a compound name does not necessarily—indicate that the article to which the name is applied contains the substances whose names make up the compound. Thus, soda water contains no soda; the butternut contains no butter; cream of tartar contains no cream; nor milk of lime any milk. Grape fruit is not the fruit of the grape; nor is bread fruit the fruit of bread; the pineapple is foreign to both the pine and the apple; and the manufactured food known as Grape Nuts contains neither grapes nor nuts."

Many names which, as to the claim that they are so descriptive as to be deceptive in the manner in which

they are used, must be classified with Coca-Cola, have been sustained as proper trade-marks. The Court of Appeals of New York thought that "Sliced Animals" was not merely descriptive, and was capable of exclusive appropriation. *Selchow v. Baker*, 93 N. Y. 59, 45 Am. Rep. 169. The same court considered "Bromo Caffeine." Defendant in that case insisted that he could call his product "Bromo Caffeine" because it was, and because plaintiff could not adopt, as a trade-mark, the words so indicating the composition of the article. It was decided that while the name indicated a compound caffeine with some bromide, this indication was too vague and indefinite to put the name beyond the forbidden limit. The discussion by Judge Peckham is thoroughly applicable to the instant controversy. *Keasbey v. Bromo, etc.*, Wks., 142 N. Y. 467, 474, 476, 37 N. E. 476, 37 N. E. 476, 40 Am. St. Rep. 623. A very similar case is that concerning "Lacto Bacilline," application of La Societe Ferment, 81 L. J. R. 724. In *Ludington v. Leonard*, 127 Fed. 155, 62 C. C. A. 269, it was specially urged upon the Circuit Court of Appeals of the Second Circuit that the name "carroms," as applied to a game resembling billiards was either too accurately descriptive or too deceptive and misleading to be exclusively used even under the secondary meaning theory; but the contention was not upheld. Perhaps the controlling distinction cannot be better expressed than was done by Judge Showalter when he said (*American Fiber Chamois Co. v. De Lee* [C. C.] 67 Fed. 329, 331):

"If said words, as here combined, have any sense, as descriptive of the class of goods in question, it is not so pronounced, obvious, and usual as to make said combined words, unfit, inappropriate or misleading, as a name, sign or mark of origin of complainant's goods."

Cases like *Standard Co. v. Trinidad Co.*, 220 U. S. 446, 31 Sup. Ct. 456, 55 L. Ed. 536, are sharply distinguishable. In that case it was found as a fact that

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the word involved, "Rubberoid," was in common dictionary use as an adjective, so that it was merely descriptive. There was no room for it to carry any arbitrary character in addition. This feature, with its attendant distinction, is typical of the cases relied upon by appellant. When it cannot be said that the words "Coca-Cola," from 1895 to 1905, gave to the public "reason, accurate, and tolerably distinct knowledge as to what the ingredients were," these cases relied on by appellant lose their pertinence.

(4) We conclude that the name Coca-Cola as applied to plaintiff's product, while undoubtedly suggestive, is not so substantially and really deceptive as to invalidate the registered mark.

(5) Closely connected with what has been said, but separately urged by defendant, is the claim that because in compounding its product, defendant has used coca leaves in considerable quantity and has used real cola nuts to furnish the caffeine, it must be permitted to call its article "Coca-Cola." This is really another aspect of the matter already decided. If the name is not so substantially and definitely descriptive (rather than suggestive) as to be deceitful if employed where the supposed description is not true, it follows that the name is not so merely descriptive that its use remains of common right after public acquiescence for 20 years in plaintiff's exclusive appropriation. Analogy is found in the illustration above quoted from counsel. Assuming that "Grape Nuts" had been exclusively used for a long period as the distinct name of a particular maker's compound food, could a new-comer rightfully take away a part of the established trade by using the same name for his new compound, just because it contained some nuts and was flavored with grape juice? To us a negative answer seems imperative, and no less so in the instant case.

(6) 5. On the accounting before the master, plaintiff did not seek damages as such, but asked an award of the profits made by defendant. No question arises except that presented by the fact that Mr. Fletcher,

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the general manager of defendant corporation, received during the infringing period a salary of \$2,700. If defendant was entitled to credit for this salary as a part of its operating expenses, there were no profits; if the item was an improper credit, there was a balance of profit to be recovered. Without question, the defendant was an actual corporation organized in the regular way for business purposes. It succeeded to Mr. Fletcher's private business. He actively caused it to be organized, and he became and continued president and general manager. Two-thirds of the capital was contributed by others, and Mr. Fletcher did not have the control of the corporation, except by sufferance of the majority of the stockholders. There is no claim that the corporation was a mere sham or subterfuge brought into existence to cover up his individual activities. Under these circumstances, and when the only question is the amount of profits which the corporation actually made, justice to the majority stockholders, if no other reason, requires that his fair and reasonable salary be treated like any other disbursement.

The District Judge was right in concluding that there was no profit.

(7) 6. The plaintiff moved to dismiss defendant's appeal from the interlocutory decree for injunction, because the appeal was not taken within 60 days; and, as this motion raises a question of our jurisdiction, it must be considered. The interlocutory decree awarding injunction and making a reference to take an account of damages was entered July 29, 1912. The master's report was filed October 8th; defendant excepted, and the final order of the court on the exceptions was dated November 25th. This order made no reference in terms to the order of July 29th, and was, in terms, confined to the sustaining of one exception, the over-ruling of another, an adjudication that the plaintiff had failed to establish any damages, and a disposition of the costs. November 11th, the defendant had claimed and had been allowed "an appeal

from the decree of July 29th," and had assigned errors thereon, but the citation was not issued nor the bond on appeal approved until November 26th. Clearly the decree of July 29th did not become final until the order of November 25th. This last order might well have repeated, in terms or by reference, the provisions of the order of July 29th, so that there would have been one complete, final decree, and we think this would have been according to the most careful practice; but the order of November 25th necessarily has this effect, and operates to re-declare the adjudications which, up to that time, had been interlocutory and within the control of the court, and which then, for the first time, became final. The defendant then had six months within which to appeal from any part of this consolidated final decree. Loveland's Appellate Jurisdiction, 467, 468; Grant Co. v. Laird Co., 212 U. S. 445, 29 Sup. Ct. 332, 53 L. Ed. 591. Inasmuch as the appeal which defendant did take was not perfected until after this final decree had been entered, we think it may properly be treated as having been taken from that decree. No prejudicial irregularity comes from the fact that July 29th was named as the date of the decree from which appeal was taken and to which error was assigned. It would have been absolutely accurate to appeal "from the decree of July 29th as re-entered on November 25th," and this is the substantial effect of what was done. The same result is reached by considering that the time for appeal from the decree of July 29th (under section 11 of the Circuit Court of Appeals Act (Act March 3, 1891, c. 517, 26 Stat. 829; U. S. Comp. St. 1901, p. 552), as distinguished from one under section 129 of the Judicial Code (Act March 3, 1911, c. 231, 36 Stat. 1134; U. S. Comp. St. Supp. 1911, p. 194) did not begin to run until November 25th. That the appeal was prayed and allowed prematurely and before the effective entry of the decree appealed from is not fatal irregularity. For this purpose, these preliminary steps may be treated as speaking as of the day when

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they became fully effective by the perfecting of the appeal. The motion to dismiss must therefore be *denied*.

Upon both appeals, the judgment below is *affirmed*.

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UNITED STATES CIRCUIT COURT
OF APPEALS,
EIGHTH CIRCUIT

238 FEDERAL 513

No. 4605—DECEMBER TERM, 1916

THE COCA-COLA COMPANY, Appellant,

v.

CHARLES G. BENNETT and WILLIAM R. BENNETT, Co-Partners doing business under the name of BENNETT MINERAL & DISTILLED WATER COMPANY, Appellees.

1. TRADE-MARKS AND TRADE-NAMES, K. N. 68—RIGHT OF OWNER OF TRADE-MARK — UNAUTHORIZED BOTTLING OF GOODS.

A manufacturer of a syrup used with a carbonated water to produce a beverage which was sold either at soda fountains or in bottles, whose registered trade-mark covered both the syrup and the beverage, but who bottled none of the beverage, having contracted with others therefor under contracts requiring the purchase of the syrup from the manufacturer and its preparation under regulations to protect the quality, can prevent one who has not the manufacturer's consent from bottling the syrup with carbonated water, even in accordance with the regulations, and selling it under the trade-mark, since otherwise the manufacturer would have no means for protecting the quality of the goods sold under his trade-mark.

2. TRADE-MARKS AND TRADE-NAMES, K. N. 68—RIGHTS OF OWNER—SALES IN BULK.

When a manufacturer of an article of food or drink sells it in bulk, and also puts it up in bottles bearing a distinctive trade-mark, the purchaser of the article in bulk cannot legally bottle it and affix the manufacturer's label to the bottle.

3. MONOPOLIES, K. N. 21 — VIOLATION OF ANTI-TRUST ACT—RIGHTS OF OWNER OF TRADE-MARK.

The invalidity, under Sherman Anti-Trust Act July 2, 1890, c. 647, 26 Stat. 209 (Comp. St. 1913, Secs. 8820-8830), of contracts by which the owner of a trade-mark covering both a syrup and the beverage made therefrom granted the exclusive right to bottle the beverage, does not affect the owner's right to prevent the sale of the beverage under the trade-mark by one who bottled it without consent.

Appeal from the District Court of the United States for the District of Kansas. JOHN C. POLLOCK, Judge.

Suit by The Coca-Cola Company against Charles G. Bennett and another, co-partners doing business as Bennett Mineral & Distilled Water Company. Judgment for the defendants (225 F. 429), and plaintiff appeals. *Reversed and remanded*, with instructions to grant the injunction prayed for.

Frank F. Reed and *Edward S. Rogers*, of Chicago, Illinois (*Candler, Thomson & Hirsch*, Atlanta, Georgia; *Holmes, Yankey & Holmes*, Wichita, Kansas, *Harold Hirsch*, Atlanta, Georgia, and *Charles G. Yankey*, Wichita, Kansas, on the brief), for appellant.

C. M. Williams, Hutchinson, Kansas, for appellees.

Before SANBORN, ADAMS, and CARLAND, Circuit Judges.

CARLAND, Circuit Judge, delivered the opinion of the Court:

Appellant brought this action against appellees to restrain an alleged trade-mark infringement and unfair competition. The trial court upon consideration of the pleadings and certain stipulated facts dismissed the complaint for want of equity. The facts upon which appellant relies for relief are substantially as follows:

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Appellant is a corporation of the State of Georgia, with its principal place of business at Atlanta, in said State. Appellees are co-partners doing business under the firm name of Bennett Mineral & Distilled Water Company at Hutchinson, Kansas. Appellant is the owner of the trade-mark Coca-Cola and the business of the manufacture and sale of two kinds of syrup in connection therewith. The trade-mark covers both the syrups and beverages made therefrom. It was registered in the Patent Office of the United States January 31, 1893, and again October 31, 1905. The name Coca-Cola has been exclusively used by appellant and its predecessors since on or about the year 1886, for the purpose of identifying the syrups manufactured by it and its predecessors as their own product and to distinguish it from all other articles marketed and sold by others. The name Coca-Cola has been used by said appellant exclusively in connection with its product by attaching and applying said name to all barrels, kegs, jugs, bottles and other receptacles containing said product and also by placing said name on labels in connection therewith.

Great care, skill and judgment has at all times been used by appellant and its predecessors in the manufacture of said product, Coca-Cola, in order to protect it from contamination and impurities and in the barreling and putting up of said product so that the product should reach the consumer in a clean and wholesome condition and great pains have also been taken by appellant that the bottles and other receptacles in which the product has been placed are free from dirt or objectionable matter, and great amounts of time and labor have been expended by appellant in marketing and selling its product under the name Coca-Cola throughout the United States and in foreign countries.

Coca-Cola is universally known and large sums have been expended in advertising said product. The product Coca-Cola is received by the consuming public in two ways: over the soda fountain and in bottles.

The syrup as such is not consumed by the public. At the soda fountain it is mixed with carbonated water and in bottles it is similarly mixed.

Appellant does not bottle its bottling product itself, but its entire bottling product is sold under contract to two Tennessee Corporations, viz.: Coca-Cola Bottling Company and The Coca-Cola Bottling Company, which in turn have given the privilege under contract to certain other corporations and individuals to bottle the syrup made for bottling purposes and to use in connection therewith the trade-mark Coca-Cola. Among the corporations having the privilege of bottling is the Western Coca-Cola Bottling Company.

Any person or corporation receiving authority by contract to bottle and sell bottled Coca-Cola in a prescribed territory agrees to bottle the same in the following manner: To prepare and put in bottles using a crown stopper thereon, a mixture of Coca-Cola syrup and of water charged with carbonic acid gas under pressure of not less than one atmosphere, said Coca-Cola syrup and said water in said mixture to be used in proportions of not less than one ounce of Coca-Cola syrup to each seven or eight-ounce bottle of carbonated water making thereof a carbonated drink of the strength stated; said person or corporations also agree not to add any compound, syrup, color, flavoring matter, acid, headings, sugar or other sweetener or any other preservative of any name or nature or any other substance or ingredient whatsoever or any water other than pure carbonated water commonly called soda water, to the syrup furnished by the plaintiff or to the water used for carbonating, and also agrees not to use for said Coca-Cola syrup any substitute whatever or to make any other drink and sell same under the name Coca-Cola. Coca-Cola Bottling Company and The Coca-Cola Bottling Company of Tennessee take the entire output of the product of the appellant manufactured for bottling purposes. No other person, firm or corporation buys or can buy the same from the appellant. The appellant is in no way

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directly or indirectly interested in the two Coca-Cola Bottling Companies, above described, or interested in any of their profits, but the contract between them provides that appellant shall retain control over its trademark and have the rights of inspection and supervision for the purpose of securing the bottling of its product according to contract as hereinbefore stated.

The two bottling companies with the consent of appellant have divided the territory described in the contract between them, and said companies have entered into contracts with other companies by which contracts local bottling companies are given the exclusive right within certain restricted territory to bottle and sell the bottled product, Coca-Cola.

The Western Coca-Cola Company, organized under the laws of the State of Illinois, is one of these companies. Its territory embraces several states, including Kansas. The Bottling Companies do not enter into a contract with more than one person, firm or corporation in the territory allotted to any local bottler. The contracts between the two Coca-Cola Bottling Companies sometimes referred to as the parent companies and the various local bottling companies are always approved and consented to by the appellant. The appellant has no financial interest in the local bottling plants. The appellant sells its bottling product to the parent bottling companies described and will not accept any order for said product except from these two bottling companies, and no other person, firm or corporation can buy Coca-Cola syrup from appellant for bottling purposes than the companies above described. The local bottling companies are supplied direct from the factories of the parent bottling companies, but the order comes to the appellant through the parent bottling companies and these bottling companies pay appellant for the bottled product so distributed to the local bottling plants. The shipments of bottling syrup are made both in interstate and intrastate commerce aggregating a large volume of business.

The defendants are using the trade-mark Coca-Cola on a bottled product without the authority or permission of appellant. The product so bottled by defendants is the Coca-Cola syrup as manufactured by appellant for bottling purposes bought by the defendants partly from the Western Coca-Cola Bottling Company and partly from vendees of appellant and in the open market. The said Coca-Cola syrup is mixed by defendants with carbonated water and sold as a beverage under the trade-mark Coca-Cola and defendants have no contract with or authority from the Coca-Cola Bottling Companies or appellant for bottling the same and no restriction as to the use of said syrup is agreed upon by defendants with the jobbers or wholesalers from whom they purchase said syrup. All of the Coca-Cola which defendants have manufactured and sold has been made from the Coca-Cola syrup manufactured and sold by appellant in the usual and ordinary way which appellant authorizes and permits consumers and patrons to manufacture and sell Coca-Cola as a beverage. Paragraph 16 of the complaint which is admitted by the answer is as follows:

“That by reason of the premises your orator is rightfully and equitably entitled to the sole and exclusive use of the trade-mark ‘Coca-Cola’ and to protection in the use thereof as applied to its products, and in equity and good conscience to protection against all manner and form of fraudulent use and imitation of said trade-mark, and that the public generally has at all times acknowledged and acquiesced in the aforesaid rights of your orator and of your orator’s predecessors aforesaid in and to said trade-mark.”

The question arising on the facts as above stated is: Have the defendants without the authority or permission of the appellant the right to manufacture Coca-Cola as a beverage by mixing the bottling syrup of appellant with carbonated water and sell the same to the public under the trade-mark Coca-Cola?

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The trade-mark Coca-Cola covering as it does both the bottling syrup and the beverage made therefrom by adding carbonated water, entitled the appellant to the exclusive right to manufacture and sell its syrup and also to make and sell the beverage known as Coca-Cola. Certainly if the appellant has the exclusive right to make and sell under its trade-mark the beverage called Coca-Cola, it can grant the right and privilege to others to do that which it might do itself, and it necessarily results from this state of the case that no person or corporation can manufacture the bottled beverage called Coca-Cola and sell the same under appellant's trade-mark without its consent or authority. It is true that the appellant has no money directly invested in the business of the bottling companies, but it is very plain that as the syrup manufactured by the appellant is not itself consumed by the public as such there could be no sale of the syrup unless there was a sale of the beverage made therefrom, and so it is apparent that the appellant is directly and greatly interested in having its bottled product delivered to the consuming public under such circumstances and in such manner as will promote the sale thereof.

It is also apparent that the only way the appellant can secure the right to supervise the manner of the bottling of its product is to refuse to grant the privilege of bottling except upon condition that certain prescribed regulations are complied with. It would, therefore, seem to be too plain for argument that both under the law of trade-mark and upon sound reason defendants in the case at bar may not without the consent and authority of the appellant manufacture the bottled beverage and sell the same under the appellant's trade-mark, Coca-Cola.

Counsel for the defendants argue that as it appears that defendants use the bottling syrup of the appellants and mix the same with carbonated water in the same way that appellant authorizes other persons and

corporations to do, they have the right to manufacture and sell under the appellant's trade-mark. But suppose that other persons and corporations without number should be of the same opinion, it would result that appellant would have no control over the integrity of its trade-mark, which is its guaranty that the beverage is as represented, and its business might be ruined. It is true the defendants might sell the bottling syrup which they buy under the appellant's trade-mark, but since they change the syrup into a beverage without the permission and authority of appellant, they have no right to sell the same under appellant's trade-mark. The argument advanced is also faulty as it would permit persons other than the owner of the trade-mark to control its use.

The law seems to be settled that when a manufacturer of an article of food or drink sells it in bulk and also puts it up in bottles the latter bearing a distinctive trade-mark, a purchaser of the article in bulk will be guilty of unfair competition and be enjoined from bottling and affixing the manufacturer's distinctive label upon the goods bottled by him.

Coca-Cola Company v. J. G. Butler & Sons, 229 Fed. 224; Krause v. Peebles Co., 58 Fed. 585, 592; People v. Luhre, 105 N. Y. 377 (89 N. E. 171); Hennesy v. White, Cox Manual Trade-Mark Cases 377; Brown on Trade-Marks, Sections 910, 759 and authorities there cited.

One of the reasons for this rule is that: "Unless the manufacturer can control the bottling he cannot guarantee that it is the genuine article prepared by him." And as said by Judge TRIEBER in Coca-Cola Company v. J. G. Butler & Sons, *supra*, "To this may be added that he cannot tell whether it is bottled in so careful a manner as essential to the preservation of the article and the maintenance of its good reputation."

It would seem that to uphold the contention of counsel for the defendants would be to destroy all

THE COCA-COLA COMPANY

the value that the appellant's trade-mark has. It would open the door to any person or corporation to adulterate the beverage sold as Coca-Cola without any right in the appellant to prevent it. "The greatest value of a trade-mark is the reputation established by the excellence of the article and the knowledge and appreciation of that fact by the consuming public. An article without any merit can derive no benefit from a trade-mark and only a temporary benefit from the most extensive advertisement. It is like the value of a 'good will' in an established going concern. It depends upon the successful operation of the business. Without that there is no value to it. Who would pay for the good will of a business conducted at a loss?" *Coca-Cola Company v. Butler & Sons, supra.*

The cases of *Russia Cement Company v. Frauenher*, 133 Fed. 518, and *Apollinaris Company v. Scherer*, 27 Fed. 18, are cited as sustaining the position of counsel for defendants, but an examination of these cases shows that in the Cement Case the same cement without any addition or subtraction was re-sold under the trade-mark name. If the defendants in this case had simply re-sold the syrup it would be within the reasoning of the case cited, but they did not do that. They changed the syrup into a beverage and they say that they changed it in the same manner that the appellant authorized other persons to do. But the trouble with this argument is that it destroys appellant's exclusive right to its trade-mark and the resulting rights, to say who may use it.

In the *Apollinaris* Case the same water without subtraction or addition was sold under its true name. Without prolonging the discussion further we do not think the defendants have the right to manufacture and sell Coca-Cola under the trade-mark name of appellant without its consent. Counsel for defendants further urge that the contracts which appellant has

made with the Tennessee corporations and which the Tennessee corporations have made with appellant's consent with local persons and corporations are in violation of the Sherman Law.

The trial court seems to have based its ruling in dismissing the complaint partly upon this proposition, it appearing to that court that this suit was one to enforce these contracts. We do not think the validity of the contracts are in anywise brought into question on this record. The appellant simply claims that the defendants have no right to manufacture and sell Coca-Cola under appellant's trade-mark without its consent and our decision in this case goes no further than to hold that the claim of appellant is well founded. We do not decide that the whole or any part of the contracts made by appellant with the bottling companies are valid. The granting of the consent of appellant to the defendants to manufacture and sell the product Coca-Cola under its trade-mark could be manifested without the contracts mentioned in the evidence. It will be time enough to decide as to the validity of the contracts when a suit arises in which their validity is involved, and when some person is sued who has a contract. Manifestly, if the consent and authority of appellant is necessary in order to manufacture and sell Coca-Cola under its trade-mark, then appellant has the right to impose any such reasonable condition in the granting of such consent as will protect the integrity of the trade-mark.

It results from what we have said that the judgment dismissing the complaint should be *reversed* and the case *remanded* with instructions to the trial court to grant the injunction prayed for. The question of damages was not considered in the lower court and that question will be left open to be dealt with as law and justice may require.

ADAMS, Circuit Judge, concurred in the decision of

THE COCA-COLA COMPANY

this case, but deceased before the opinion was prepared.

Filed December 8, 1916.

A true copy.

Attest:

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals,
Eighth Circuit.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF KANSAS,
SECOND DIVISION

THE COCA-COLA COMPANY, Plaintiff,

v.

CHAS. G. BENNETT and WILLIAM R. BENNETT,
Co-Partners doing business under the name of
BENNETT MINERAL & DISTILLED WATER
COMPANY, Defendants.

FINAL DECREE.

The mandate of the Circuit Court of Appeals of the Eighth Circuit having been received in the above stated case, and after a consideration thereof it is *ordered, adjudged and decreed* that the defendants, Chas. G. Bennett and William R. Bennett, Co-Partners doing business under the name and style of Bennett Mineral & Distilled Water Company they and each of them, and all their associates, salesmen, servants, clerks, agents, workmen, employes, and every person claiming or holding under or through the said defendants or in any way connected with their business, are hereby perpetually enjoined and restrained from in any way or manner making or selling their product in such a way as to pass off the same as and for the product of The Coca-Cola Company, and from using in any form whatsoever the name "Coca-Cola" as applied to any drink, or from using any name sufficiently similar to the name "Coca-Cola" as applied to any drink so as to cause deceit, and from doing any acts in any manner or form in the premises as is calculated to deceive.

THE COCA-COLA COMPANY

It is further *decreed and adjudged* that the Coca-Cola Company has the sole and exclusive right to the use of the mark or name "Coca-Cola" in connection with a drink or beverage, and further, that The Coca-Cola Company has the sole and exclusive right to the use of the peculiar and individual design or form of writing the name "Coca-Cola" as described and set out in the petition in the above stated case.

It is further *ordered, adjudged and decreed* that the said Chas. G. Bennett and Wm. R. Bennett, deliver up to The Coca-Cola Company all labels, boxes, advertising matter, stoppers and crowns in their possession, which bear the name "Coca-Cola" alone, or in association with any other words, and also all of its product in any form sufficiently similar to the product of the Coca-Cola Company to cause deception.

It is further *ordered, adjudged and decreed* that the plaintiff have judgment against the defendants in the sum of One Hundred (\$100.00) Dollars for damages caused by the acts of defendants complained of in the petition, for which amount execution may issue.

It is further *ordered* that the defendants, Chas. G. Bennett and William R. Bennett pay the costs accrued in this case, and that the plaintiff recover of and from said Bennett the cost of this suit to be taxed and have execution therefor.

This 16th day of March, 1917.

(Sd) JOHN C. POLLOCK,
U. S. District Judge.

Coca-Cola

Taka-Kola

IN THE CIRCUIT COURT
OF APPEALS
FOURTH CIRCUIT

271 FEDERAL 600

No. 1729—MARCH 3, 1921

THE COCA-COLA COMPANY,
v.
OLD DOMINION BEVERAGE CORPORATION.

Appeal from the District Court of the United States
for the Eastern District of Virginia.

EDWARD S. ROGERS, Chicago, Illinois,
HAROLD HIRSCH, Atlanta, Georgia,
(C. V. MEREDITH, of Richmond, Virginia,
CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
FRANK F. REED, Chicago, Illinois, on the brief),
For Appellant.

ROBERT E. SCOTT, Richmond, Virginia,
L. O. WENDENBURG, Richmond, Virginia,
(T. GRAY HADDON, Richmond, Virginia, on the
brief),
For Appellee.

THE COCA-COLA COMPANY

IN THE CIRCUIT COURT OF APPEALS,
FOURTH CIRCUIT

271 FEDERAL 600

No. 1729—MARCH 3, 1921

THE COCA-COLA COMPANY,
v.
OLD DOMINION BEVERAGE CORPORATION.

1. TRADE-MARKS AND TRADE-NAMES 45 — DESCRIPTIVENESS IMMATERIAL WHEN REGISTERED UNDER 10-YEAR PROVISIO.

It is immaterial that a trade-mark registered under the 10-year proviso of the Federal Trade-Mark Law (Comp. St. 9490) may once have been descriptive or may still be to some degree.

2. TRADE-MARKS AND TRADE-NAMES 41 — WHEN REGISTERED TRADE-MARK AND INFRINGEMENT USED IN INTERSTATE COMMERCE, PROTECTION OF FEDERAL ACT MAY BE INVOKED.

Where the owner of a registered trade-mark and an infringement both used their marks in interstate as well as intrastate commerce, the trade-mark owner may invoke the federal statutes, no matter how narrow the construction of the protection that they can constitutionally give.

3. COURTS 292 — COMMON-LAW RIGHTS IN TRADE-MARK ENFORCEABLE IN FEDERAL COURT WHEN DIVERSE CITIZENSHIP AND SUFFICIENT AMOUNT IN CONTROVERSY EXISTS.

Where the parties to a suit for infringement of a trade-mark and unfair competition are corporations of different states the amount in controversy exceeds \$3,000, a United States court may enforce plaintiff's common-law rights in its trade-mark and against unfair competition.

V. OLD DOMINION BEVERAGE CORPORATION

4. TRADE-MARKS AND TRADE-NAMES 79 — INJUNCTION, BEING APPROPRIATE RELIEF, JUSTIFIES SUING IN EQUITY.

In a suit for infringement of a trade-mark and unfair competition, an injunction is an appropriate part of the relief sought and hence the complaint is properly brought on the equity side of the court.

5. TRADE-MARKS AND TRADE-NAMES 53 — CANNOT BE USED BY ONE MANUFACTURING BEVERAGE SIMILAR TO OWNER'S BEVERAGE THOUGH UNPATENTED.

Though any one, if he can, may manufacture a beverage similar to an unpatented beverage sold under a trade-name, and claim that it is not only as good as that sold under the trade-name, but in fact is the same thing, he cannot, in so doing, use the trade-mark to the damage of its owner.

6. TRADE-MARKS AND TRADE-NAMES 59 — DEFENDANT HELD TO HAVE INFRINGED PLAINTIFF'S TRADE-MARK AND BEEN GUILTY OF UNFAIR COMPETITION IN SALE OF BEVERAGE UNDER SIMILAR NAME.

Where plaintiff's beverage had been on sale under its trade-name, "Coca-Cola," registered as a trade-mark, long before defendant began business, and its business had grown in great proportions, defendant, by adopting the name "Taka-Kola," uniting the words by a hyphen and displaying them in script, as did plaintiff, and using a color scheme on the crown corks of its bottles making them indistinguishable at a distance of a few feet, was guilty of unfair competition and infringement of plaintiff's trade-mark, especially where the similarity of names had suggested to unscrupulous retailers the mixing of the two products and the sale of the mixed products as Coca-Cola.

Appeal from the District Court of the United States for the Eastern District of Virginia, at Richmond.
HENRY CLAY McDOWELL, Judge.

Suit by the Coca-Cola Company against the Old Dominion Beverage Corporation. From a decree dismissing the bill of complaint, plaintiff appeals.
Reversed and remanded.

Edward S. Rogers, of Chicago, Ill., and *Harold Hirsch*, of Atlanta, Ga. (*C. V. Meredith*, of Richmond,

THE COCA-COLA COMPANY

Va., *Candler, Thomson & Hirsch*, of Atlanta, Ga., and *Frank F. Reed*, of Chicago, Ill., on the brief), for appellant.

Robert E. Scott and *L. O. Wendenburg*, both of Richmond, Va. (*T. Gray Haddon*, of Richmond, Va., on the brief), for appellee.

Before KNAPP and WOODS, Circuit Judges, and ROSE, District Judge.

ROSE, District Judge:

Plaintiff's trade-mark "Coca-Cola" is duly registered under the ten-year provision of the federal trade-mark law (Comp. St. 9490). It is therefore immaterial that it may once have been descriptive or that to a degree it may be so still. *Thedeus Davids Co. v. Davids*, 233 U. S. 468.

The Supreme Court has very recently overruled the contention that because of what is said to have been or to be its deceptive character plaintiff may not be heard to complain of its infringement. *Coca-Cola Company v. Koke Company* (Decided December 6, 1920).

The bill in this case charges that defendant has infringed it by the sale of its wares under the trade-mark "Taka-Kola," and has also unfairly competed by the use of such words and by the design and ornamentation of its bottles.

In dismissing the case without opinion the learned District Judge of the Western District of Virginia sitting by special assignment may have been influenced by the decision of the Circuit Court of Appeals for the Ninth Circuit of *Coca-Cola Co. v. Koke Company*, 255 Fed. 894, since reversed by the Supreme Court in the case heretofore cited.

Plaintiff, from a time long anterior to the use of the words "Taka-Kola" by anybody, had actively and continuously marketed its wares in the very localities

v. OLD DOMINION BEVERAGE CORPORATION

in which defendant has offered its drink for sale. Both plaintiff and defendant use their respective marks in interstate as well as intrastate commerce, so that the former may invoke the Federal Acts no matter how narrow may be the construction of the protection they constitutionally give. *Louis Bergdoll Brewing Co. v. Bergdoll Brewing Company*, 218 Fed. 131.

The parties are corporations of different states and the value of the thing in controversy exceeds \$3,000.00, so that the Courts of the United States may enforce the common law rights of the plaintiff as well in its trade-mark as against unfair competition. An injunction is an appropriate part of the relief for which it asks, so that it has properly preferred its complaint to the equity side of the Court.

The beverages upon which the marks are used are not only of the same general character, but are in fact so similar in taste, color and appearance that it is doubtful whether the ordinary purchaser can tell one from the other when they come to him unmarked and otherwise unidentified.

When defendant began business the plaintiff's drink had been on sale in most parts of the country and certainly in Virginia for a quarter of a century or more. Its business had grown to great proportions, a result due in large if not in largest part to the extensive and expensive advertising it has always done, the cost of which in recent years has averaged a million or more annually. Defendant was promoted by some persons who came here from Tennessee, where they or some of them had been connected with a concern which, in the Patent Office, had had a losing fight with the plaintiff over the right to use the words, "Tenn-Cola," *Coca Cola Co. v. Tenn-Cola Co.* (Patent Office Opposition No. 1894).

Perhaps the geographical proximity of Tennessee to Atlanta in which plaintiff's business began, and in which it became so visibly and attractively lucrative,

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explains why this is not the first instance in which plaintiff has thought itself compelled to complain of infringement and of unfair competition originating in that state. Coca-Cola Company v. Nashville Syrup Company, 200 Fed. 157, affirmed in 215 Fed. 527, and of which Coca-Cola Co. v. Duberstein, 249 Fed. 763, appears to have been an aftermath. Coca-Cola Company v. Gay-Ola Company, 200 Fed. 920; Coca-Cola Co. v. Tenn-Cola Co., *supra*.

In the instant case the defendant's mark "Taka-Kola" consists as does "Coca-Cola" of two words, each of four letters and of two syllables. In each phrase a consonant and a vowel alternate, there being in each four of the one and four of the other. Plaintiff's a and o each appear twice. Defendant's has three a's and one o. The consonant l is common to both and in each is the seventh letter from the beginning. Plaintiff's contains three c's, having in every instance the hard or k sound. Twice defendant replaces the c with a k, and once by a t, the use of which last must be relied upon to distinguish the two words, for in every other respect they are for all practical purposes identical. The two words of plaintiff are united by a hyphen, so are those of the defendant. The plaintiff displays its in script. The defendant has followed suit. The color scheme of the crown corks with which each seals its bottles is so nearly the same that when they are lying on their sides with the tops outward, or are standing upon their bottoms in racks or trays, they are at a distance of a few feet indistinguishable. It taxes credulity to believe that so close a resemblance was accidental.

There, however, appears to be nothing of substance in plaintiff's claim that defendant has imitated its distinctive type of bottle. The two designs are not enough alike to justify a finding that as to them there is unfair competition.

The defendant, after the manner of others in like case, says it has always wanted to sell its drink for

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what it is, and to that end has done all that in it lies to distinguish its product from Coca-Cola. The courts have had frequent occasions to note the scant success which too often rewards such efforts.

In this case it is true that the evidence does not show that the defendant ever asked anyone to sell its product as Coca-Cola. It appears that in Richmond at least most purchasers know that Taka-Kola is in a way different from Coca-Cola. On the other hand, the similarity of names seems to have suggested to unscrupulous retailers that they could mix defendant's product with that of plaintiff and sell the compound as Coca-Cola, the marked likeness in taste and color making such a partial substitution safe and easy. At one time when in Richmond the supply of Coca-Cola ran short, this fraud appears to have been practiced to an appreciable extent.

The strength of defendant's position, if it has any, must lie in the soundness of the contention which it sets up implicitly if not explicitly, that as Coca-Cola is not patented it has the right to make it if it will and can, or may make something as near like it as its skill and knowledge will permit; that having produced a beverage which in all substantial respects is almost if not quite the same thing, there is no reason why it may not tell the public it has done so, and that it makes no legal difference whether to give this information it uses many sentences or but one or only two short words. It says that while the phrase "Taka-Kola" informs possible purchasers that the beverage it makes is very much like Coca-Cola, it also gives him to understand that it is the product of another concern.

The argument is ingenious. It is of course true that because plaintiff's drink is not patented anyone who knows how can make it without leave or license from plaintiff, but also because it never has been patented the name which constitutes plaintiff's trade-mark for it, may not, without plaintiff's consent, be either used

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or imitated by another. *Buffalo Specialty Co. v. Van Cleif*, 227 Fed. 391. *Hopkins on Trade-Marks*, 3rd Ed. Sec. 51.

May defendant employ for the sole purpose of bringing its wares speedily and cheaply into notice a variant of plaintiff's trade-mark so close as to suggest the latter to everyone, thereby turning to its own profit the reputation which the plaintiff has built up through many years of skill and effort, and at the cost of millions expended in advertising its goods under its mark? It may tell the thirsty that its drink is not only as good as Coca-Cola, but that it believes it to be in fact the same thing, but can it do so by using plaintiff's trade-mark to plaintiff's hurt? Even if there is no attempt by defendant to palm off its goods as those of plaintiff, does it necessarily follow that defendant is not unfairly competing? The right to equitable relief is not confined to cases in which one man is selling his goods as those of another. *International News Service v. Associated Press*, 248 U. S. 215, at 241. What in that case upon a different state of facts, was said of the respondent, is applicable to defendant's conduct here, for it too "amounts to an unauthorized interference with the normal operation of complainant's legitimate business precisely at the point when the profit is to be reaped, in order to divert a material portion of the profit from those who have earned it to those who have not." (*Vide supra*, page 240.)

By using the words "Taka-Kola" and by imitating the ornamentation of the crowns of plaintiff's bottles, defendant has unfairly competed and is still doing so, but has it not also infringed upon plaintiff's exclusive right to the use of its Federally registered trade-mark? A trade-mark is property of a limited and qualified kind it is true. It cannot exist apart from the business with which it is connected nor in jurisdiction into which that business has not gone leaving on one side the possible effect of State or Federal

V. OLD DOMINION BEVERAGE CORPORATION

registration. But it is property still within the somewhat restricted limits imposed upon its owner's rights. It would seem to follow as we think it does that it is entitled to protection against the attempt of a competitor to use it to push his wares to the possible and probable damage of the owner. Plaintiff's rights are limited at the most to two words. All the rest of infinity is open to defendant. It will be safe if it puts behind it the temptation to use in any fashion that which belongs to the plaintiff. It has not done so voluntarily and compulsion must be applied.

It is unnecessary to say that we are deciding the case before us. Here we have found from all the facts both infringement of a trade-mark and unfair competition. We are not to be understood as intimating any opinion as to whether plaintiff has or has not any exclusive rights in either of the words which made up the trade-mark when either is used separately from the other, and under circumstances in which there is no attempt by a competitor to use plaintiff's property to plaintiff's damage.

Both on the grounds of unfair competition and of infringement of a registered trade-mark, defendant must be *enjoined* from the further use in its business of the phrase "Taka-Kola" and from continuing its unfair competition in the simulation of the ornamentation of the crowns of plaintiff's bottles, and must account for what it has done.

It follows that the decree dismissing the bill of complaint must be *reversed* and the cause *remanded* for further proceedings in accordance with the conclusions herein stated.

Reversed.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

THE COCA-COLA COMPANY,	} No. 1729.
Plaintiff,	
v.	
OLD DOMINION BEVERAGE CORPORATION,	
Defendant.	

DECREE

Upon the filing of the mandate of the Circuit Court of Appeals, and it appearing from the said mandate that the Circuit Court of Appeals has reversed with costs the decree of this Court entered herein on the 27th day of December, 1918, and has remanded this cause to this court with directions, and it appearing further that, pending the proceeding in the Circuit Court of Appeals, The Coca-Cola Company, a Delaware corporation, succeeded to the rights of the original plaintiff herein, The Coca-Cola Company, a Georgia corporation, and that said The Coca-Cola Company, of Delaware, has been duly substituted as plaintiff herein; and it appearing further that the Supreme Court of the United States, on June 6, 1921, denied defendant's application for a writ of certiorari to review the decree of the Circuit Court of Appeals herein; now, in conformity with the mandate of the Circuit Court of Appeals, it is *Ordered, Adjudged and Decreed* as follows:

1. That the Court has jurisdiction of the subject matter and of the parties to this suit.

v. OLD DOMINION BEVERAGE CORPORATION

2. That the word Coca-Cola is a valid trade-mark of which plaintiff is the sole owner.

3. That plaintiff alone, is entitled to use the trade-mark Coca-Cola and that its goods alone, can lawfully be sold under that name.

4. That plaintiff being the owner of the trade-mark Coca-Cola, duly registered its said trade-mark under and in conformity with the Act of Congress approved March 3, 1881, entitled: "An Act to authorize the registration of Trade-marks and to protect the same," and under the Act of Congress of February 20, 1905, entitled: "An Act to authorize the registration of Trade-marks used in commerce with foreign nations or among the several states or with Indian tribes and to protect the same," that said registrations numbered 22,406 and 47,189 respectively, are valid and subsisting, and are the sole property of the plaintiff, and that the plaintiff is entitled to the rights and remedies provided in said statutes.

5. That the word Taka-Kola, adopted and used by the defendant, is an infringement of the plaintiff's said trade-mark, Coca-Cola and is a copy or colorable imitation thereof, within the meaning of the Act of Congress of February 20, 1905, and that the defendant has affirmed said copy or colorable imitation to merchandise of substantially the same descriptive properties as those set forth in plaintiff's said registrations and to labels, signs, prints, packages, wrappers and receptacles intended to be used upon and in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registrations and has used such copy or colorable imitation in commerce among the several states of the United States, and that the defendant thereby has infringed the plaintiff's said registered trade-mark.

6. That the defendant has used and applied to packages containing its said product, decorated crowns with a color scheme and script lettering thereon so

THE COCA-COLA COMPANY

nearly the same as the distinctive crowns and script lettering of the plaintiff as to be substantially indistinguishable therefrom, and that the defendant thereby has competed unfairly with the plaintiff.

7. That defendant, Old Dominion Beverage Corporation, its officers, agents, servants, employes, attorneys, licensees, transferees and assigns and each and all thereof and all acting by or under its authority, be and they are each and all perpetually enjoined and restrained from using or employing or authorizing the use or employment, in connection with the manufacture, advertisement, offering for sale or sale of any beverage or ingredient thereof, of plaintiff's trade-mark Coca-Cola or any like word or the colorable imitation thereof, Taka-Kola or any like word; from using or employing or authorizing the use or employment of designs, devices, script lettering, or crowns identical with or like the designs, devices, script lettering, or crowns of the plaintiff, or the designs, script lettering, devices or crowns used by the defendant and referred to in the bill of complaint herein, and further from doing any act or thing or using any name or names, device, artifice or contrivance which may be calculated or likely to cause any product not the plaintiff's to be sold as and for the product of the plaintiff, and that writs of injunction accordingly issue forthwith.

8. That defendant account to the plaintiff any and all profits derived by said defendant from defendant's unfair trading with the plaintiff, and in addition to the profits to be thus accounted for by the defendant, the defendant pay to the plaintiff the damage plaintiff has sustained by reason of defendant's said infringement and unfair trading, and this cause is hereby referred to Robt. H. Talley, Esq., Master in Chancery of this Court, to take and state an accounting to the plaintiff for any and all such profits and any and all such damages, with full power to the Master to subpœna and order the attendance of

v. OLD DOMINION BEVERAGE CORPORATION

witnesses, to take depositions and require the production of books, papers and documents pertinent to the taking and stating of said accounting, and to report to this court such accounting and statement of profits and damages; with the right to the plaintiff to move the court to enter judgment upon said accounting for any sum above the amount found as the actual damages, not exceeding three times the amount thereof.

9. That all labels, signs, prints, packages, wrappers or receptacles in the possession of the defendant bearing the colorable imitation Taka-Kola of the plaintiff's registered trade-mark Coca-Cola be forthwith delivered up for destruction, provided however that the bottles of the defendant with the name blown therein may be used in the sale of drinks not resembling that of the plaintiff where the name Taka-Kola is removed or hidden and the name of the contents of said bottles plainly shown on same.

10. That defendant pay the costs of this suit to be taxed, including the costs in the Circuit Court of Appeals and the costs in this court, and that upon taxation plaintiff have execution therefor.

D. LAWRENCE GRONER,
U. S. Judge.

Richmond, Va.,
July 12, 1921.

A true copy. Attest.
(Signed) R. E. POWERS,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

256 U. S. 703; 65 L. ED. 1179

No. 908

OLD DOMINION BEVERAGE CORPORATION,
v.
THE COCA-COLA COMPANY.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the
Fourth Circuit.

Denied on June 6, 1921.

MR. WILLIAM L. SYMONS,
For Petitioner.

MESSRS. HAROLD HIRSCH and EDWARD S. ROGERS,
For Respondent.

Coca-Cola
TRADE MARK
REGISTERED



IN THE COURT OF
APPEALS
OF THE
DISTRICT OF COLUMBIA

273 FEDERAL 755

No. 1393—JUNE 6, 1921

THE COCA-COLA COMPANY,
v.
CHERO-COLA COMPANY.

HAROLD HIRSCH, Atlanta, Georgia,
EDWARD S. ROGERS, Chicago, Illinois,
NELSON J. JEWETT, Washington, D. C.,
For Appellant.

C. L. PARKER, Washington, D. C.,
MELVILLE CHURCH, Washington, D. C.,
For Appellee.

THE COCA-COLA COMPANY

IN THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA

273 FEDERAL 755

No. 1393—JUNE 6, 1921

THE COCA-COLA COMPANY,

v.

CHERO-COLA COMPANY.

1. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—RIGHT TO REGISTER TRADE-MARK DEPENDS ON WHETHER IT WOULD TEND TO CONFUSE OR DECEIVE PURCHASERS.**

Under the Trade-Mark Act (Comp. St. Sec. 9490), the test of the right to register a trade-mark, opposed by the owner of a trade-mark applying to goods of the same descriptive property, is whether or not the marks are so similar as to be likely to cause confusion in the public mind or to deceive purchasers.

2. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—ARGUABLE DIFFERENCES DO NOT DEFEAT OPPOSITION TO TRADE-MARK REGISTRATION.**

The fact that applicant's and opposer's marks do not sound quite alike, and have a different number of letters in each are only arguable differences, which are not enough to defeat the opposition, since the second applicant, having an almost limitless field to choose from, should select a mark clearly distinguished from the existing mark.

3. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—"CHERO-COLA" HELD LIKELY TO CONFUSE PURCHASERS DESIRING "COCA-COLA."**

Applicant's trade-mark of "Chero-Cola" is sufficiently similar to the opposer's mark, "Coca-Cola," to be apt to confuse an ordinary purchaser, who generally does not have more than a faint impression

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of the trade-mark and acts quickly on a general glance, so that the opposition to the registration of the trade-mark will be sustained, especially where witnesses testified to numerous instances of actual confusion produced by applicant's mark, and applicant's own counsel in the examination of witnesses several times confused the two marks.

4. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—DOUBTS AS TO RIGHT TO REGISTER MUST BE RESOLVED IN FAVOR OF OPPOSER.

Doubts as to the right of an applicant to register a trade-mark against the opposition of the owner of a mark for goods of the same descriptive properties must be resolved in favor of the opposer.

Appeal from the Commissioner of Patents.

Application by the Chero-Cola Company for the registration of a trade-mark, opposed by The Coca-Cola Company. From a decision of the Commissioner of Patents, over-ruling the opposition, the opposer appeals. *Reversed.*

Edward S. Rogers, of Chicago, Ill., *Harold Hirsch*, of Atlanta, Ga., and *Nelson J. Jewett*, of Washington, D. C., for appellant.

C. L. Parker and *Melville Church*, both of Washington, D. C., for appellee.

SMYTH, Chief Justice:

Appellee made application to have registered in the Patent Office the words "Chero-Cola" as a trade-mark for "Cola," a soft drink. The application was opposed by the appellant, on the ground that it (the appellant) was the owner of the registered mark "Coca-Cola," which is applied by it to the same kind of a drink. The Examiner of Interferences sustained the opposition, but was reversed by the Commissioner of Patents.

Opposer has been using its mark since 1886, while applicant did not adopt its mark until 1911. It is

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conceded that the goods of the parties have the same descriptive properties, and therefore there is but one matter for our decision, namely, whether or not the marks are so similar as to be likely to cause confusion in the public mind or to deceive purchasers. 33 Stat. L. 725 (Comp. St. Sec. 9490).

Nearly 3,000 pages of testimony were taken, and elaborate briefs have been filed. Many decisions by courts in this country, and in England are cited, and, besides, we are invited to listen to the teaching of psychology on the subject. None the less the question in dispute is a simple one, and the principles by which its solution may be reached have been often declared and applied to this court.

It is true that, if we analyze the two marks, differences will be found. They do not sound quite alike, and the number of letters in each is not the same, but these are only arguable differences, which are not enough to defeat the opposition. *William Waltke & Co. v. Geo. H. Schafer & Co.*, 49 App. D. C. 254, 256, 263 Fed. 650, and cases cited; *Thos. Manufacturing Co. v. Aeolian Co.*, 47 App. D. C. 376, 379.

Each of the marks embraces two hyphenated words. "C" is the first letter in each mark, and "Cola" the last word in each. The image which one mark paints upon the mind is not clearly different from that made by the other mark. To require that the line which separates marks should be well defined is not to ask too much, since the field from which a person may select a mark is almost limitless. *Florence Manufacturing Co. v. Dowd & Co.*, 178 Fed. 73, 75, 101 C. C. A. 565; *Waltke & Co. v. Schafer & Co.*, *supra*; *Thos. Manufacturing Co. v. Aeolian Co.*, *supra*, 47 App. D. C. 378. If he is not content with a word to be found in a dictionary, he may coin one.

Of course, if the two marks were placed together, or if a person's attention was in some way directed to them there would be no difficulty in apprehending the difference between them. This, however, is not

the way to make the test. Ordinarily the prospective purchaser does not carry more than a faint impression of the mark he is looking for. If the article offered to him bears a mark having any resemblance to the one he is thinking of, he is likely to accept it. He acts quickly. He is governed by a general glance. The law does not require more of him. *Patton Paint Co. v. Orr's Zinc White*, 48 App. D. C. 221.

Many witnesses testified to numerous instances of actual confusion produced by applicant's mark. Even counsel for applicant in the cross-examination of witnesses, several times confused "Coca-Cola" with "Chero-Cola." The statute does not require proof of actual confusion, but when there is such proof it is not easy to escape the conclusion that the assailed mark if registered, would be likely to do that which it has done.

Opposer, as we have seen, adopted its mark in 1886, and has been using it ever since, so that "the mark for years has acquired a secondary significance, and has indicated the plaintiff's (opposer's) product alone." *Coca-Cola Co. v. Koke Co. of America*, 254 U. S. 143, 41 Sup. Ct. 113, 65 L. Ed. —. Millions have been spent by it for advertising its goods under the mark. During the time that it has used the mark it has been doing business in Atlanta, Ga. Applicant's place of business is in a nearby town—Columbus, Ga. It, as we have said, did not commence to use its mark until 1911, 25 years after opposer had put into use its mark. Why was this mark selected by it, since it had so many others from which to choose? Is not its action open to the inference that the purpose was to appropriate some of opposer's business, by producing confusion in the minds of the purchasing public? Whatever the purpose may have been, it is quite undeniable that mistakes have resulted from the use of applicant's mark.

Even if we doubted with respect to the proper solution of the question before us, it would be our duty

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to resolve the doubt against the applicant. *Lambert Pharmacal Co. v. Mentho-Listine Co.*, 47 App. D. C. 197; *William Waltke & Co. v. Geo. H. Schafer & Co.*, *supra*.

Considering the matter in the light of the statute, the record and our previous decisions, we are constrained to hold that the opposition should be sustained, and hence the decision of the Commissioner of Patents must be, and it is, *reversed*.

Reversed.

IN THE CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT

221 FEDERAL 61

MARCH 8, 1915

THE COCA-COLA COMPANY,
v.
GLEE-NOL BOTTLING CO., *et al.*

TRADE-NAMES AND TRADE-MARKS, K. N. 70 — UNFAIR
COMPETITION—ACTS CONSTITUTING.

Bottles of the same size, shape, color, and general appearance as those commonly used for plaintiff's beverage, Coca-Cola, and that of defendant, Glee-Nol, were in general use as containers of many other beverages similarly dealt in. The beverages were unlike in taste or odor, and there were many other beverages on the market having practically the same color as both. Defendant had not undertaken to mislead dealers to whom it sold, nor to induce them to substitute Glee-Nol for Coca-Cola. Though the name Glee-Nol was blown into the same parts of the bottles at which the name Coca-Cola was blown into the bottles containing it, generally, but not universally, and though the name appeared in the same style of script, or type in imitation of written letters, it did not appear that, prior to the time defendant commenced placing the name on that part of the bottle, corresponding places on plaintiff's bottles had been in such general and exclusive use that the mere presence of any word at such place had come to be accepted generally or to any appreciable extent as an identification of the beverage, nor did it appear that the use of the same style of script resulted in any greater resemblance than that existing between two written or printed words which are wholly different except in so far as a letter or letters common to both are alike, and it appeared that no one could be deceived, unless he was so utterly unobservant that he might be deceived without any resemblance between the two articles. **HELD**, that unfair competition on defendant's part did not appear.

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Appeal from the District Court of the United States for the Eastern District of Louisiana. RUFUS E. FOSTER, Judge.

Suit by the Coca-Cola Company against The Glee-Nol Bottling Company and others. Decree for defendants, and plaintiff appeals. *Affirmed.*

Harold Hirsch, of Atlanta, Ga., and *John May*, of New Orleans, La. (*Candler, Thomson & Hirsch* and *A. W. Candler*, all of Atlanta, Ga., and *Fred S. Weis*, of New Orleans, La., on the brief), for appellant.

Henry P. Dart, of New Orleans, La. (*Dart, Kernan & Dart*, of New Orleans, La., on the brief), for appellee Glee-Nol Bottling Co.

Edward P. Foley, of New Orleans, La., for appellee Grosz.

Before PARDEE and WALKER, Circuit Judges, and SHEPPARD, District Judge.

WALKER, Circuit Judge:

We concur in the conclusion reached by the District Court that the evidence adduced was insufficient to furnish substantial support for the claim of unfair competition made by the bill. Bottles of the same size, shape, color, and general appearance as those commonly used as containers of the two drinks in question, that of the plaintiff, Coca-Cola, and that of the defendant company, Glee-Nol, are in general use as containers of many other drinks which are similarly dealt in. The name of the defendant company's drink is not at all like that of the plaintiff. The one drink is not like the other in either taste or odor. There are many other drinks on the market which have practically the same color as that of each of these two. There was no evidence at all having a tendency to prove that the defendant in

any way undertook to mislead the dealers to whom alone it sells its drink or to induce them to substitute Glee-Nol when Coca-Cola was called for; and there was no evidence of any conduct of the defendant company from which it could be inferred that anything it did amounted to an imitation of any distinguishing feature of the plaintiff's product or was intended to, or in fact did, beguile the public or any part of it into buying Glee-Nol under the impression that they were buying Coca-Cola, unless such evidence is found in that which went to prove that the name Glee-Nol was blown into the same parts of the bottles containing it at which the name Coca-Cola is found blown into the bottles generally but by no means universally, used by the distributors of that beverage, and that the letters forming the name Glee-Nol, where it appears on the bottles used by defendant company, are of a style of script or type made in imitation of written letters similar to that used in displaying the name Coca-Cola on the bottles containing it.

The evidence failed to show that, prior to the time of the defendant company's selection of the places on its bottles at which the name of its drink was blown in, corresponding places on their bottles had been in such general and exclusive use for the same purpose by the distributors of the plaintiff's drink that the mere presence of a word, without regard to what it was, blown at those places into such bottles as the plaintiff's drink was generally marketed in, had come to be accepted generally or to any appreciable extent as a ready means of identifying the beverage which a bottle contained as Coca-Cola and distinguishing it from any other beverage similarly served. And it was not made to appear that the use by the defendant company of the same style of script as that used for the name Coca-Cola on the bottles containing it resulted in there being any resemblance between the two names as they were respectively displayed other than such as exists between two written or printed words which are wholly different, except in so far as

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a letter or letters common to both alike. The impression made by the evidence as a whole is that the respective products of the plaintiff and the defendant company, and the ways they are put up, are unlike in so many respects and are so readily distinguishable, and the points of resemblance are so few and of a kind so unlikely to create confusion, as to negative the conclusion that there was an imitation which was either intentional or deceptive and to indicate the improbability of any one being deceived into accepting Glee-Nol when he calls for Coca-Cola, unless he is so utterly unobservant when he gets and consumes such a beverage that a deception might with equal success be practiced upon him, whether there is or is not a resemblance in any identifying particular between what he calls for and what he gets. A charge of unfair competition cannot be sustained by such evidence. "The essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vendor for those of another, and if defendant so conducts its business as not to palm off its goods as those of complainant the action fails." *Howe Scale Co. v. Wyckoff, Seamans & Benedict*, 198 U. S. 118, 140, 25 Sup. Ct. 609, 614 (49 L. Ed. 972); *Coca-Cola Co. v. Branham, et al.* (D. C. 216 Fed. 264).

The decree appealed from is *affirmed*.

IN THE CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT

212 FEDERAL 412

No. 2478—FEBRUARY 17, 1914

THE COCA-COLA COMPANY,

v.

HORSTMAN, *et al.*

TRADE-MARKS AND TRADE-NAMES (Sec. 93)—SUIT FOR
INFRINGEMENT—SUFFICIENCY OF EVIDENCE.

A decree dismissing a bill for infringement of trademark *affirmed*.

PARDEE, Circuit Judge, dissenting on the merits, but holding that on record the court was without jurisdiction.

Appeal from the District Court of the United States for the Western District of Texas. THOMAS S. MAXEY, Judge.

Suit in Equity by The Coca-Cola Company against Frederick Horstman and Angelo Basseti, doing business under the firm name of the Austin Bottling Works. Decree for defendants, and complainant appeals. *Affirmed*.

Candler, Thomson & Hirsch, Atlanta, Georgia, *M. M. Crane*, Dallas, Texas, and *H. O. Head*, Sherman, Texas, for appellant.

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John W. Brady, of Austin, Texas, for appellees.

Before PARDEE and SHELBY, Circuit Judges, and GRUBB, District Judge.

Per curiam. Finding this case was correctly ruled and decided in the District Court, the decree appealed from is *affirmed*.

PARDEE, Circuit Judge (dissenting) :

It seems to me that the District Court was without jurisdiction. Diverse citizenship is not sufficiently alleged in the bill, nor otherwise shown in the record (*Grace v. American Central Insurance Company*, 109 U. S. 278, 3 Sup. Ct. 207, 27 L. Ed. 932; *Wrisley v. Rouse Soap Company*, 90 Fed. 5, 32 C. C. A. 496), and the bill does not allege, nor is it shown by evidence in the record, that the defendants are infringing complainant's trade-mark in interstate, foreign or Indian commerce. *Ryder v. Holt*, 128 U. S. 525, 9 Sup. Ct. 145, 32 L. Ed. 529; *Warner v. Searle & Hereth Company*, 191 U. S. 195, 24 Sup. Ct. 79, 48 L. Ed. 145.

As the record stands, the decree below is one dismissing the bill on the merits. In my judgment, on the merits the complainant below and appellant here is entitled to relief, and the decree below, dismissing the bill, should be so qualified as to permit complainant to bring another suit.

UNITED STATES OF AMERICA,
BEFORE FEDERAL TRADE COMMISSION. } ss.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 17th day of November, A. D. 1919.

Present:

JOHN FRANKLIN FORT, Chairman,	} Commissioners.
VICTOR MURDOCK,	
HUSTON THOMPSON,	
WILLIAM D. COLVER,	

DOCKET No. 39

FEDERAL TRADE COMMISSION

v.

THE COCA-COLA COMPANY.

ORDER DISMISSING PROCEEDING..

The Federal Trade Commission having heretofore issued a complaint under date of February 15, 1918, in the above entitled proceeding against The Coca-Cola Company, charging said company with unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes," and with violation of the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and the respondent having filed its answer, an agreed statement of facts having been entered

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into, and briefs submitted, the Commission, on a consideration of the whole case, is of the opinion that present public interest not appearing, it is therefore

Ordered, that the above entitled proceeding be, and the same is, dismissed and discontinued without prejudice.

By the Commission.

(Signed) J. P. YODER.

J. P. YODER,
Secretary.

John Walsh, Chief Counsel for the Commission.

Candler, Thomson & Hirsch, for The Coca-Cola Company.

UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF GEORGIA

SUIT TO RECOVER TAXES
ILLEGALLY COLLECTED

THE COCA-COLA COMPANY, Plaintiff,
v.
HENRY A. RUCKER, Defendant.

Gentlemen of the Jury:

The action of the plaintiff, The Coca-Cola Company, against H. A. Rucker, collector of internal revenue, is in effect, a suit against the United States of America. The purpose of this suit is to recover certain taxes claimed by the United States from The Coca-Cola Company, and collected under and by virtue of what is known as the War Revenue Tax Act of 1898

It is agreed between counsel for the respective parties that the taxes which were paid, and which are now sought to be recovered, were paid under protest, and that the formalities required in such cases were complied with, and that the real question for your determination is whether the tax exacted by the government was lawful or unlawful. The amount of the tax is not in dispute, and is as shown in the plaintiff's declaration, \$10,858.76, which they will be entitled to recover, if entitled to recover at all, with interest thereon from the dates the respective payments were made, as shown in the declaration and not disputed, as I understand it.

The Plaintiff company by its suit asserting that the tax collected of it was unlawful, it is incumbent on

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it by a preponderance of the evidence to show you that this is true, by showing that the preparation on which this tax was collected does not come within the terms of the revenue act referred to.

The claim of the government is that the Coca-Cola preparation is a medicinal proprietary article and preparation; that it is a medicinal article compounded by formula and that it is put up in the style and manner similar to that of patent, trade-mark and proprietary medicines in general, but that in any event it is advertised to the public as a remedy or specific for human ailments, and as having special claim to merit in mode of preparation, quality, use and effect.

The revenue act in question, under the head of medicinal, proprietary articles and preparations, uses this language:

“For and upon every packet, box, bottle, pot or phial, or other inclosure containing any pills, powders, tinctures, troches or lozenges, syrups, cordials, bitters, anodynes, tonics * * * and all medicinal preparations or compositions whatsoever, made and sold, or removed for sale by any person or persons whatever, wherein the person making or preparing the same has or claims to have any private formula, secret or occult art for the making or preparing the same, or has or claims to have any exclusive right or title to the making or preparing the same, or which are prepared, uttered, vended or exposed for sale under any letters patent or trade-mark, or which, if prepared by any formula published or unpublished, are held out or recommended to the public by the makers, vendors or proprietors thereof as proprietary medicines, or medicinal proprietary articles or preparations, or as remedies or specifics for any disease, diseases or affection whatever affecting the human or animal body as follows:” Then proceeds to affix the amount of the percentage tax.

The latter part of Section 20 of the act in question is an interpretation or construction of schedule B,

which I have just read to you. It provides that "The stamp taxes provided for in schedule B, of this act, shall apply to all medicinal articles compounded by any formula, published or unpublished, which are put up in style or manner similar to that of patent, trade-mark or proprietary medicines in general, or which are advertised on the package or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use or effect."

Two questions are really presented for your determination under the evidence in this case. The first is whether the Coca-Cola preparation is a medicine or medicinal article which is compounded by formula which is published or unpublished and put up in a manner similar to that of patent, trade-mark or proprietary articles in general; or, second: whether the Coca-Cola preparation is advertised on the package or otherwise as a remedy or specific for any ailment or as having any special claim to merit or any peculiar advantage in its mode of preparation, use, quality or effect.

There has been very little dispute in the evidence as to the character of the ingredients which go to make up the Coca-Cola syrup, and the claim for the plaintiff is that while some of the ingredients which enter into the preparation of Coca-Cola may be such as are classed as drugs for certain purposes, yet that as used by them they should not be so considered. They claim that what they put up is merely a syrup which is used mainly and almost entirely in the preparation of a beverage, drank across the counter at soda fountains.

On the other hand, it is claimed that on account of the ingredients which are compounded into this syrup, and the formula used, and the trade-mark obtained for the same, it comes within this act in that respect, or that in any event it is held out to the world by The Coca-Cola Company as a medicinal

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preparation, and for that reason, it comes within the act, whether it is really in effect a medicinal preparation or not.

The question for your consideration is whether it is really a medicinal preparation in itself, or if not, whether it is put out by the company to the world as such in its advertising matter. If so, it is subject to the tax. If, on the other hand, it is used as a beverage simply and purely, and only held out to the world by the plaintiff in its advertising matter as such, it is subject to the tax. It is said on the part of the government that by its advertising matter, this preparation is held out to the world as a remedy for headache and for nervous exhaustion, and that headache and nervous exhaustion are ailments within the meaning of the act. This is a question for the jury to determine. It is a question for you as men of ordinary sense to determine from your own knowledge of such matters, and from the evidence of the case. You have the evidence of experts on the subject. This act speaks of ailments, and it is said that these two things, headache and nervous exhaustion, are ailments of the human body. The Court instructs you that the jury should take the words used in this act in their usual and ordinary significance and give them the meaning which in this way would be attributed to them. Revenue acts are construed strictly in favor of the citizen, but if the words of a tax act have a plain and ordinary meaning, in common acceptance and use, this meaning should be given them.

The Court instructs you further that if, notwithstanding the fact of the sale of this preparation in connection with carbonated water, as a soda fountain beverage, a practically important part of the preparation is in itself medicinal in character, or if as advertised to the public, a practically important part of the merit and effect claimed for it is medicinal in character, it is subject to the tax and the plaintiff

should not recover. If, on the other hand, you believe that the medicinal quality of this preparation, either in itself, or as held out by the company's advertisements to the public, is incidental and so slight as not to be a material part thereof, it would not be subject to tax, in the opinion of the Court, and you should find for the plaintiff.

I repeat that to you, gentlemen, that if you find from the evidence in this case, that notwithstanding the fact that very largely this preparation is sold in connection with carbonated water, across the counter of soda fountains as a beverage, a practically important part of its use and effect, in itself or as claimed for it by advertising matter which is sent out by The Coca-Cola Company is medicinal in character, it would be subject to this tax. If, on the other hand, its use is as a medicinal preparation is incidental, slight and not material in character, it would not be subject to the tax, and you should find for the plaintiff in this case, the amount in dispute.

Now, gentlemen, it is conceded that the preparation in question is a compound, and that it is put up by a private formula, and it comes up to that portion of the act undoubtedly. The only real question is whether, notwithstanding its use as a beverage a practically important part of the preparation, as I have stated, in itself or as the company holds it out to the public, is medicinal in character. The act, very clearly, in the opinion of the Court, makes those preparations subject to tax that are held out by advertising matter, by the parties engaged in selling them, as medicinal in character, whether they are really so in themselves or not.

The jury should give all the evidence in this case a fair consideration. You have had the evidence of several physicians who testified as experts in this case, and you have had the testimony of two practical chemists who have given you their opinions on the subject. The jury should give all this evidence a fair

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consideration without any kind of favor either to the government or to the plaintiff. You deal simply with the question presented to you here, as it has been presented by the pleadings, by the evidence and the instructions of the Court.

If the jury believes from all the evidence in this case that the plaintiff has established by a preponderance of the evidence, the fact that this preparation which they are selling does not come within the characterization of the revenue act in question, then the tax upon it was unlawful and they are entitled to a verdict at your hands.

If, on the other hand, you do not believe they have established this fact, if they have not established it to your satisfaction, you should find for the defendant.

Take the case, gentlemen, and find a verdict.

VERDICT.

Atlanta, Ga., Feb. 5, 1902.

We, the jury, find for the plaintiff ten thousand eight hundred fifty-eight dollars and seventy-six cents, with interest.

JOHN M. GREEN, Foreman.

JUDGMENT.

Whereupon, it is considered and adjudged by the Court that the plaintiff recover of the defendant ten thousand eight hundred fifty-eight and 76/100 dollars (\$10,858.76) principal, and two thousand and seventy-two and 35/100 dollars (\$2,072.35) interest, and..... dollars, costs.

February 5, 1902.

Arnold & Arnold, Attorneys for Plaintiff.

U. S. Attorney E. A. Angier, *Asst. U. S. Attorney George L. Bell*, Attorneys for Defendant.

Rucker v. Coca-Cola Company (Circuit Court of Appeals, Fifth Circuit, October 21, 1902). No. 1,161.

In Error to the Circuit Court of the United States for the Northern District of Georgia. *E. A. Angier* and *George L. Bell*, for plaintiff in error. *Reuben R. Arnold*, for defendant in error. Before PARDEE, McCORMICK and SHELBY, Circuit Judges.

Per curiam. The judgment of the Circuit Court is affirmed.

Rucker, Collector, v. Coca-Cola Company (Circuit Court of Appeals, Fifth Circuit, October 17, 1903), No. 1,239. In Error to the Circuit Court of the United States for the Northern District of Georgia. *E. A. Angier, Geo. L. Bell* and *C. D. Camp*, for plaintiff in error. *Reuben R. Arnold*, for defendant in error. Before PARDEE, McCORMICK and SHELBY, Circuit Judges.

Per curiam. As we find that the taxable character of Coca-Cola, under the revenue act, was settled adversely to the United States in the former adjudication (117 Fed. 1006, 54 C. C. A. 248) duly pleaded on the trial, the record herein presents no reversible error, and the judgment of the Circuit Court is affirmed.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

229 FEDERAL 224

THE COCA-COLA COMPANY,

v.

J. G. BUTLER & SONS.

FINAL OPINION.

1. **TRADE-MARK AND TRADE-NAMES — 1 — INFRINGEMENT—DECEPTION OF PUBLIC.**

The protection given by law to trade-marks has for its object the protection of the owner in his property, and the protection of the public from deception, by reason of a misleading claim that the article bearing the trade-mark is the article manufactured by the owner of the trade-mark, when in fact it is but a substitute.

2. **TRADE-MARKS AND TRADE-NAMES—57—INFRINGEMENT—DECEPTION OF PUBLIC.**

The use of any simulation of a trade-mark which is likely to induce common purchasers, exercising ordinary care, to buy the article to which the trade-mark is affixed, thereby indicating that it is the product of the owner of the trade-mark, is unlawful, and will be enjoined.

3. **TRADE-MARKS AND TRADE-NAMES — 68 — UNFAIR COMPETITION—USE OF TRADE-MARK.**

Plaintiff, a manufacturer of a syrup constituting the principal ingredients of a beverage sold at soda fountains and in bottles, made up the syrup in two forms—one for sale through jobbers for soda fountains, and one intended for use in bottling and sold by it only to bottlers selected, designated and licensed by it, and authorized to use thereon its distinctive tops and labels bearing its trade-mark—there being some differences in the two syrups, on account of the different purposes to which they were to be put. It guaranteed its product to be wholesome and uniform, as well as its cleanliness and excellence of manufacture, and maintained

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an elaborate system for the inspection of the plants of its licensed bottlers. Defendant purchased from jobbers the syrup intended for soda fountain use, and used it in manufacturing a bottled preparation which it was selling under the name of plaintiff's product, using the tops and labels prepared by plaintiff for its product. HELD—that this constituted unfair competition, and would be enjoined.

4. TRADE-MARKS AND TRADE-NAMES—67—RIGHT TO MONOPOLY—STATUTORY PROVISIONS.

The monopoly given the owner of a trade-mark by the trade-mark laws is not forbidden by the Sherman Act (Act July 2, 1890, c. 647, 26 Stat. 209), or any other Act of Congress.

5. MONOPOLIES—17—SALES OF GOODS—DISCRIMINATION.

Where the manufacturer of a syrup used as the principal ingredient in a beverage and sold by it only to bottlers licensed by it, guaranteed the purity and quality of the beverage by using distinctive tops and labels on its bottles, and to protect itself against claims for damages on the guaranty maintained a system of inspection of the plants of its licensed bottlers, it did not violate the Sherman Act, as its requirements were reasonable and beneficial to the public, in view of its responsibilities and the right of purchasers to obtain the identical article which they desired to buy.

6. MONOPOLIES 17—SALES OF GOODS — DISCRIMINATION.

The refusal of such manufacturer to sell its syrup for bottling to a party other than its licensed bottlers, and to permit such party to use its trade-mark in connection with the bottled product, was not a violation of Clayton Act October 15, 1914, c. 323, paragraph 3, 38 Stat. 731, providing that it shall be unlawful to sell goods for use or re-sale, or to fix a price therefor, or discount or rebate from such price on the condition that the purchaser shall not use the goods of a competitor, where the effect may be to substantially lessen competition or to create a monopoly in any line of commerce, in view of the possibility of adulteration and the hardship to the manufacturer of maintaining such supervision over the bottling as it deemed necessary, if required to sell to every intending purchaser.

In Equity. Suit by The Coca-Cola Company against J. G. Butler & Sons. Decree for plaintiff.

The plaintiff seeks to enjoin the defendants, who constitute a mercantile firm, doing business under the

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firm name of J. G. Butler & Sons, from using in connection with the manufacture, advertising, offering for sale, or sale of any beverage the words "Coca-Cola," or any like word or words, and in any other manner infringing upon the plaintiff's rights as owner of the trade-mark "Coca-Cola" and also seeks an accounting of the damages sustained by it by reason of the unlawful use of its trade-mark.

The material allegations in the complaint are: That the plaintiff is now, and has been ever since 1892, manufacturing and marketing a syrup for making a beverage sold to the public under the name of "Coca-Cola." That it became vested with and entitled to the sole and exclusive right to use that trade-mark, which has been duly registered in the United States Patent Office on May 14, 1892, under the provisions of the Act of Congress of March 3, 1891, c. 565, 26 Stat. 1106. That on April 22, 1905, registration of the said trade-mark was again allowed by the Commissioner of Patents under the Act of Congress approved February 20, 1905, c. 592, 33 Stat. 724. That it has manufactured and marketed, and is now manufacturing and marketing, two kinds of said syrup—one designed and adapted for making a beverage by mixing with carbonated water at soda fountains in the presence of the purchaser, which is intended for immediate consumption, and is a fountain drink, and is well known to the public. The other kind is designed and adapted to be used, and is used, for manufacturing a carbonated beverage put up and sold for consumption in bottles; each of them being sold by the plaintiff in distinctive packages, bearing its trade-mark name on distinctive labels. That it has at all times insured and safeguarded the manufacture and bottling of said carbonated bottled beverage made from its "Coca-Cola" bottling syrup, by selecting, designating, and licensing the bottlers using the said bottling syrup, and inspecting and supervising the manufacture, carbonating and bottling of said beverage by said bottlers, so as to safeguard and insure the purchasers

and consumers of said bottled product as to the quality, purity and character thereof, and has under such circumstances and conditions, and none others, allowed and permitted the use of the name "Coca-Cola," as the trade-mark therefor, and as plaintiff's guaranty of the authenticity of the said carbonated and bottled beverage, and plaintiff's supervision, inspection and approval thereof and responsibility therefor. So that in connection with a bottled drink, the name "Coca-Cola" is plaintiff's guaranty of genuineness and fidelity that such drink is properly made of proper materials, and is plaintiff's assurance of cleanliness and excellence of manufacture, carbonating, bottling, and sale, and is so relied upon by the purchasers and the public. That it has expended large sums of money in advertising to the public that its beverage under its trade-name, can be had at fountains and in bottles, and that the bottled product which is offered to the public in bottles, with plaintiff's trade-mark name "Coca-Cola," applied to the bottled beverage, means to the public a beverage produced wholly under conditions which plaintiff supervises and controls, and one guaranteed throughout by plaintiff to be so produced, and to be wholesome, palatable and uniform, and is so understood by the public. It is then charged that the defendants have put upon the market in bottles a product somewhat resembling in taste and appearance the plaintiff's bottled "Coca-Cola," but which is not plaintiff's bottled "Coca-Cola," and had applied to the crown of the bottles containing said defendant's product, and upon labels attached to the bottles, the name "Coca-Cola," as the trade-mark name therefor, without plaintiff's permission or authority; that by reason thereof the public is being deceived into the belief, contrary to the fact, that the product of the defendants is the bottled product guaranteed by the plaintiff, as aforesaid.

The answer of the defendants pleads that they are not sufficiently informed as to some of the allegations

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that are set out in the complaint, and therefore demand strict proof thereof. They deny that they have put upon the market in bottles any product resembling in taste and appearance the plaintiff's bottled "Coca-Cola," but allege the truth to be that the article they have put on the market is the genuine, identical article and product known as "Coca-Cola." They admit that they have applied to the crowns of the bottles containing such product, and upon labels attached thereto, the name "Coca-Cola," but deny that it was done without authority. They allege that they purchased said product for the identical purpose to which they have applied the same, from individuals and corporations who were the lawful owners thereof, and authorized to sell the same to these defendants for the purpose of retailing the same, bottled and carbonated as "Coca-Cola," and therefore they deny that the result of this use by them has been to deceive the public into the belief, contrary to the fact, that the product of the defendants is the product guaranteed by plaintiff to be properly made of proper materials, and made, carbonated, and bottled under the plaintiff's authority and supervision. They then plead that the plaintiff, by adopting a system of exclusive contracts, has undertaken to divide the country, and especially the territory in which the defendants are operating, into districts, whereby they have agreed to sell to such persons and corporations alone, and exclusively thus contracted, which was done for the purpose of establishing and maintaining a monopoly in the sale of said product, and preventing and destroying competition in the sale thereof, among the different purchasers, and have refused and still refuse to sell and furnish such product or commodity to the defendants upon the same terms and conditions and at the same price as they are furnishing and selling this commodity to other purchasers thereof, all of which it is charged is for the purpose and object of lessening the competition

and creating a monopoly in the sale of said syrup, in violation of the laws of the United States.

The cause was submitted upon an agreed statement of facts. From this it appears: That the plaintiff is the owner of the trade-mark "Coca-Cola," and it has been used by it and its predecessor in title since May, 1886. That it was duly registered as a trade-mark in the United States Patent Office, in conformity with the laws of the United States, as set out in the complaint. That it has advertised the same throughout the United States and in foreign countries; and that over \$10,000,000 have been expended by the plaintiff in advertising it. That the following differences, among others, are made between the syrup "Coca-Cola" manufactured to be used at fountains, and that to be sold in bottles: In 1,250 gallons of the finished product the bottler's syrup contains 1,000 pounds more sugar than the other. It has 10 per cent. more coloring matter, to-wit, caramel. It contains more phosphoric acid, and some percentage less of caffeine, than does the syrup made to be used at soda fountains. The fountain syrup contains 28 pounds of caffeine to 1,250 pounds of the finished product, while that used in the bottler's syrup contains only 25 pounds of caffeine to 1,250 pounds. That the plaintiff in its sales system has two methods by which the product is sold:

First. The system by which the syrup manufactured for fountain sale is sold to jobbers and dispensers, to be sold from the soda fountain; the jobbers selling it to the dispensers under a contract that the plaintiff will supply it only in the original package, that the jobber is not to sell or offer for sale as "Coca-Cola" any imitation of or substitute therefor, and upon compliance with the terms of the contract plaintiff will allow certain rebates to the jobber, depending upon the quantity bought, provided that the sales have been to dispensers only, and none to bottlers, or for the purpose of carbonating in bottles. The dispensers' contract, which he is required to sign,

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obligates him that, when "Coca-Cola" is asked for, he will only supply "Coca-Cola" as manufactured and furnished by the plaintiff, not to sell or offer for sale as "Coca-Cola" any imitation of or substitute therefor, and if he complies with these terms he is to receive a rebate, depending upon the quantity bought by him. The plaintiff does not enter into a dispenser's contract directly, but only through the jobber. The fountain syrup is never sold for the purpose of bottling, and is not made or intended for the purpose of having the same bottled.

Second. The syrup made for bottling purposes is sold to two corporations—one "The Coca-Cola Bottling Company," and the other "Coca-Cola Bottling Company." This sale is made under and by virtue of contracts entered into between the plaintiff and the bottling companies. There was an original contract, which was later amended. The original contract was made on the 21st day of July, 1899, and by this contract the bottling company obligated itself to establish in the city of Atlanta, Ga., a bottling plant for the purpose of bottling this syrup, with carbonic acid and water, and to prepare and put up in bottles, or other receptacles, a carbonated drink containing a mixture of "Coca-Cola" syrup, and water charged with carbonic acid gas under a pressure of more than one atmosphere; the syrup to be in proportion of not less than one ounce to eight ounces of water. It also obligates itself to keep on hand a sufficient quantity to supply the demand in all the territory embraced in the agreement; that it is to buy all the "Coca-Cola" syrup from the plaintiff, upon the terms set forth, and it is not to buy any substitute therefor, or other syrup or substances, nor attempt to use or imitate in any article prepared by them "Coca-Cola" syrup. The plaintiff is also to furnish all necessary labels and advertising matter at its own cost. The right to use the name "Coca-Cola" and all the trade-marks and designs for labels then owned and controlled by the plaintiff, and the right

to vend such preparation or mixture, bottled or put up in bottles, in the United States, except the six New England states and the states of Mississippi and Texas, is granted to them exclusively; but the right to use the name, trade-mark and labels is to apply only to the carbonated mixture described, and is not to apply to the soda fountain business.

This contract was later amended by requiring the bottling company to buy all of the "Coca-Cola" syrup necessary to comply with the agreement directly from the plaintiff; not to sell or in any way dispose, without the written consent of the plaintiff, of any "Coca-Cola," except after it is carbonated and bottled. The labels and advertising matter furnished by the plaintiff are to be paid for by the bottling company at what the actual cost and freight expense may be. By another amendment made to these contracts on April 24, 1915, the provision whereby the bottling company was to purchase the syrup directly from the plaintiff was amended by eliminating the condition that the bottling company is to buy all the "Coca-Cola" necessary from the plaintiff. It also eliminates from the former contracts those provisions by which the bottling company obligated itself not to use any substitute, or substitutes, or to attempt to use or imitate "Coca-Cola" syrup, and in lieu thereof the bottling company agreed not to manufacture, deal in, sell, offer for sale, use, or handle, nor attempt to do so, either directly or indirectly, any product that is a substitute for or imitation of "Coca-Cola." By another provision in this last amendment to the former contracts the plaintiff selects the bottling company as its sole exclusive customer and licensee, for the purpose of bottling "Coca-Cola" in the territory heretofore acquired by it, and it agrees not to sell its fountain syrup to any one, when it knows that such syrup is to be used for bottling purposes; that under these contracts the bottling companies are not permitted to bottle the syrup manufactured for fountain purposes; that the two bottling companies have, with the

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approval of the plaintiff, given the right to certain local companies, which are established in different localities, for the purpose of bottling the bottling syrup of the plaintiff; that such a contract was made with the Little Rock Coca-Cola Bottling Company, for certain territory which includes the town of Russellville and county of Pope, where the defendants are carrying on the business sought to be enjoined by this proceeding.

It is further stipulated that the plaintiff sets the standard by which its product is to be bottled, and by a system of inspection and supervision inspects and supervises the bottling of its products, wheresoever made; that it requires that its bottled product shall be bottled, using certain proportions, that the plants must be kept clean, and the cases and bottles sent out in a sanitary and presentable manner, a close supervision being kept over the character of its goods being sent out; that a minute inspection is maintained in regard to the character, purity and wholesomeness of the bottled "Coca-Cola." The bottling companies have no connection in any way, shape, or manner with the sale of the fountain product. This supervision and inspection extends to all plants that bottle "Coca-Cola," no matter where situated. The difference between these two products arose from the fact that it developed, in the process of bottling, that the product when bottled, stood for a longer time after its carbonation than did the syrup used at the fountains, and therefore in order to provide for this contingency, a difference had to be made in the bottled product, and further that the character of the trade was best supplied by making a specific syrup for the particular purpose of bottling; that the syrup is not consumed by the public, only after being mixed with the proper proportions of water; that the system of supervision and inspection exercised by the plaintiff and the parent bottling companies consists of the following:

In order to see that the product is bottled in a certain manner, and that the business is properly

conducted, a system of supervisions has been organized by the plaintiff, known as the "Inspection Department." This inspection department has a competent man at the head, whose duty it is to divide up the territories in such a manner that they can be covered advantageously by the inspectors. Five inspectors in this department operate in the Southern States. The head inspector routes these different inspectors and follows them up. A report is required from these inspectors from each different plant visited. Samples of the product are taken from the plant, which product is tested in the plant, to see whether or not the product conforms to the standard established; these inspectors being trained men. The inspectors are equipped with gas test gauges and hydrometers and other instruments to enable them to determine or not whether the product is being put up according to instructions. They carry other gauges and other things to test each machine used by the bottling plant, to determine whether or not the machines are throwing the proper amount of syrup into each particular bottle. Samples are taken of the product both before and after the process of carbonation. These samples are forwarded to the head inspector at Atlanta, where they are chemically examined, and if any difference appears, they must immediately make the changes necessary to bring them to the standard prescribed by the plaintiff. If necessary, the chemical expert and a member of the advisory board are sent to make personal investigations of the plant.

The water used in the carbonating is chemically tested and the sanitary condition of the plant is investigated, the latter being one of the main questions considered at all times. The question of carbonation in making the bottled product is given strict attention by the inspectors and chemical experts; proper carbonation depending upon the machinery, the kind of water, and the temperature of the water used. As warm water cannot be carbonated, the bottling plants are required to install cooling plants to get the proper

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carbonation. The proper amount of carbonic acid is not only given the product life, but helps to preserve it against deterioration, and thereby preserves a standard of the product. This supervision and inspection is carried on in each and every bottling plant.

It is further stipulated that the defendants have not been given a contract, nor express permission, directly or indirectly, to bottle either product of The Coca-Cola Company, nor use the trade-mark "Coca-Cola." Notwithstanding this fact, the defendants are engaged in the manufacture and bottling of beverage and are bottling and putting upon the market a product, a bottle of which is filed as evidence. The syrup used in making up this product by the defendants is the fountain syrup manufactured by The Coca-Cola Company, and which they obtain in the course of trade from jobbers or retailers who have purchased the fountain product of the Coca-Cola Company, as they bottle it without permission or authority from the plaintiff, and apply the trade-mark "Coca-Cola" thereto, by using the tops and labels of the plaintiff on the product, without authority from any one authorized to give it. These purchases are made from parties who are the lawful owners thereof, and who sell the same to the defendants in the due course of trade. The plaintiff as well as the bottling companies, have refused to sell to the defendants the syrup for the purpose of bottling, although the defendant offered to purchase and pay therefor, and objected to their using the trade-mark "Coca-Cola" in connection with their bottled product, or to do anything to the plaintiff's syrup for the purpose of re-selling or using the same.

Moore, Smith, Moore & Trieber, of Little Rock, Ark. (*Reed & Rogers*, of Chicago, Ill., and *Candler, Thomson & Hirsch*, of Atlanta, Ga., of counsel), for plaintiff.

Mehaffy, Reid & Mehaffy, of Little Rock, Ark., for defendants.

TRIEBER, District Judge (after stating the facts as above) :

It is not disputed by the defendants that the plaintiff is the lawful owner of the trade-mark "Coca-Cola," that it is an asset of great value, and that the defendants are bottling, offering for sale, and selling a bottled preparation, under the name of "Coca-Cola," using the tops and labels prepared by the plaintiff for the preparation bottled under its supervision, and furnished by it to those who are engaged in bottling it, under its authority or license, and that these tops and labels indicate to the public that it is the plaintiff's preparation, made under its supervision and guaranteed by it. Although counsel have argued many important questions, there are only two issues, which under the allegations in the bill, answer, and agreed statements of facts are necessary for the determination of this case:

(1) That the preparation bottled by the defendants is made of syrup and sold by the plaintiff, and that it was purchased by the defendants for the identical purpose to which they have applied the same, and from parties who were the lawful owners thereof by purchase from the plaintiff, but not from the plaintiff, nor from its authorized vendees.

(2) That by its manner of doing business, as is fully set out in the agreed statement of facts, the plaintiff seeks to establish an unreasonable monopoly in restraint of trade, and therefore in violation of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, known as the "Sherman Act," and the amendments thereto, and the Act of October 15, 1914, c. 323, 38 Stat. 730, and known as the "Clayton Act."

(1, 2) In determining the issues in this case it is important to keep in mind the well-established principle of law that the protection given by law to trade-marks has a two-fold object: To protect the owner

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in his property, and to protect the public from being deceived by reason of a misleading claim that the article bearing the trade-mark is the article manufactured by the owner of the trade-mark, when in fact it is not, but a substitute. The use of any simulation of a trade-mark, which is likely to induce common purchasers, exercising ordinary care, to buy the article to which the trade-mark is affixed, thereby indicating that it is the product of the owner of the trade-mark, is unlawful and will be enjoined. *McLean v. Fleming*, 96 U. S. 245, 251, 24 L. Ed. 828; *Kann v. Diamond Steel Co.*, 89 Fed. 706, 711, 32 C. C. A. 324, 329; *Layton Pure Food Co. v. Church & Dwight Co.*, 182 Fed. 24, 34, 104 C. C. A. 464, 474.

(3) As the plaintiff, according to the allegations in the complaint and the agreed statement of facts, in addition to selling its product, guarantees it to be wholesome, palatable and uniform, as well as its cleanliness and excellence of manufacture, carbonating and bottling, and for that purpose maintains a very elaborate system of supervision, it would not only be an imposition on the public, who purchases the bottled preparation, but may cause great damage to the plaintiff if permitted.

If a person buying the bottled preparation, which has all the indicia of having been put up under the plaintiff's supervision and guaranty, the tops and labels on the bottles giving assurance of that fact, should sustain an injury by reason of the fact that it was improperly prepared, was unclean, contained unwholesome ingredients, had insufficient carbonic acid gas for its preservation, and by reason thereof is unfit as a beverage, or for any other cause, due to the negligence of plaintiff's licensed bottler, is injured, the plaintiff may be liable to heavy damages. Having assumed this guaranty of its bottlers, the plaintiff not only has the right, but it is its duty, to take such steps as are necessary, by a proper system of inspection, to guard the public, as well as itself, against this danger. The well-recognized rule of law is that

the manufacturer of any article of food, drink or drug intended for consumption, or of any dangerous articles, may be liable to the ultimate purchaser and consumer for negligence causing an injury, although there is no direct contractual relation between them, such an action resting on tort, and not on contract. *Waters-Pierce Oil Co. v. Deselms*, 212 U. S. 519, 29 Sup. Ct. 270, 53 L. Ed. 453; *Standard Oil Co. v. Murray*, 119 Fed. 572, 57 C. C. A. 1; *Huset v. J. I. Case Threshing Machine Co.*, 120 Fed. 865, 57 C. C. A. 237, 240, 61 L. R. A. 303; *Riggs v. Standard Oil Co. (C. C.)* 130 Fed. 199; *Keep v. National Tube Co. (C. C.)* 154 Fed. 121; *Ketterer v. Armour (D. C.)* 200 Fed. 322; *Mazetti v. Armour*, 75 Wash. 622, 135 Pac. 633, 48 L. R. A. (N. S.) 213, Ann. Cas. 1915C, 140; *Thomas V. Winchester*, 6 N. Y. 397, 57 Am. Dec. 455; *Statler v. Mfg. Co.*, 195 N. Y. 478, 88 N. E. 1063; *Wellington v. Oil Co.*, 104 Mass. 64; *Roberts v. Brewing Co.*, 211 Mass., 449, 98 N. E. 95; *Norton v. Sewall*, 106 Mass. 143, 8 Am. Rep. 298; *Bishop v. Weber*, 139 Mass. 411, 1 N. E. 154, 52 Am. Rep. 715; *Peters v. Johnson*, 50 W. Va. 644, 41 S. E. 190, 57 L. R. A. 428, 88 Am. St. Rep. 909; *Peterson v. Standard Oil Co.*, 55 Or. 511, 106 Pac. 337, Ann. Cas. 1912A. 625; *Tomlinson v. Armour & Co.*, 75 N. J. Law 748, 70 Atl. 314, 19 L. R. A. (N. S.) 923; *Dixon v. Bell*, 5 Maul. & Sel. 198.

The fact that the syrup used by the defendants is that manufactured by the plaintiff, assuming that it had been made for bottling purposes, is immaterial, for the syrup, although the principal ingredient of the finished product, is only one of several used for the preparation, when offered to the consumer. To maintain the reputation, and consequently the favor of the consuming public, it is important to the manufacturer of the preparation bearing its trade-mark that it should be wholesome, palatable, clean, and free from all impure and dangerous substances, regardless of the fact whether it was bottled by itself and sold by it directly to the consumer, or through its licensees. In this case the bill charges,

and the agreed statement of facts admits, that the plaintiff manufactures two syrups, one for bottling and the other for fountain trade; that the syrup for bottling purposes, differs in several material respects from that intended for the fountain trade; that the bottler's syrup contains more sugar, has 10 per cent. more caramel for coloring purposes, contains more phosphoric acid, and less caffeine than the fountain syrup; and these two syrups are put up and sold in distinctive packages.

The authorities are numerous that, when a manufacturer of only one article of food and drink sells it in bulk, and also puts it up in bottles, the latter bearing a distinctive trade-mark, a purchaser of the article in bulk will be guilty of unfair competition, and enjoined, if bottling it and affixing the manufacturer's distinctive labels upon the goods bottled by him. *Krauss v. Peebles Co.* (C. C.) 58 Fed. 585, 592; *People v. Luhrs*, 195 N. Y. 377, 89 N. E. 171, 25 L. R. A. (N. S.) 473; *Hennessy v. White, Cox*, Manual Trade-Mark Cases, 377; *Browne on Trade-Marks*, 910, 759, and authorities there cited. One of the reasons given for this rule is that, "unless the manufacturer can control the bottling, he cannot guarantee that it is the genuine article prepared by him." To this may be added that he cannot tell whether it is bottled in so careful a manner as is essential to the preservation of the article and the maintenance of its good reputation. This rule, of course applies with much greater force when there are two varieties manufactured by the same party and sold under the same trade-mark, but intended to be placed on the market for different purposes, as is the case in the instant cause. *Russia Cement Co. v. Katzenstein* (C. C.) 109 Fed. 314; *Cook & Bernheimer v. Ross* (C. C.) 73 Fed. 203; *Thomas G. Plant Co. v. May Mercantile Co.* (C. C.) 153 Fed. 229; *McIlhenny v. Hathaway* (D. C.) 195 Fed. 652; *Gillott v. Kettle*, 3 Duer (N. Y.) 624; *Spalding v. Gamage*, 32 R. P. C. 273; *Sebastian on Trade-Marks*, page 159; *Hopkins*

on Trade-Marks, page 275. A case almost identical with the facts in this case is *Charles E. Hires Co. v. Xepapas* (C. C.) 180 Fed. 952.

In *Powell v. Birmingham* (Yorkshire Relish Case) 14 R. P. C. 730, it was testified that the difference between the two articles under consideration was only a pinch of salt, and the Court held that, even in the case of such a small difference, the defendant had not proven the identity of their product with the plaintiff's. Of what benefit would a trade-mark be, if one buying the article protected by it were permitted to adulterate it, or given an opportunity to do so, and then offer it to the public as the genuine article, protected by the trade-mark? The greatest value of a trade-mark is the reputation established by the excellence of the article, and the knowledge and appreciation of that fact by the consuming public. An article without any merit can derive no benefit from a trade-mark, and only a temporary benefit from the most extensive advertisement. It is like the value of a "good-will" in an established going concern. It depends upon the successful operation of the business. Without that there is no value to it. Who would pay for the good will of a business conducted at a loss? The court is clearly of the opinion that, upon the facts in this case, the defendants are guilty of unfair competition.

(4) Do the facts show a violation of the Sherman Act against monopolies and stifling competition? The trade-mark laws, like the patent laws, give the owner a monopoly which neither the Sherman Act nor any other Act of Congress forbids. It would be a paradox to say that the exercise of a right, expressly granted by law, is unlawful.

(5) Counsel for defendants rely on *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373, 31 Sup. Ct. 376, 55 L. Ed. 502, and *Coca-Cola Co. v. Bennett* (D. C.) 225 Fed. 429. What was decided in the *Dr. Miles Medical Company Case* was that the manufacturer of an unpatented proprietary medicine cannot,

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after an absolute sale of the article, fix the prices for future sales. The court in its opinion in that case, holds that the restraint of trade must be determined by the particular circumstances of the case, and the nature of the principles which are involved in it, and whether it is reasonable or unreasonable. In *Coca-Cola v. Bennett*, there was no question of unfair competition claimed by the plaintiff, which is the cause of complaint in this case. Nor was there any claim in that case that the plaintiff guaranteed the purity, cleanliness, wholesomeness and quality, by using its distinctive tops and labels on its bottles, and that, for the purpose of protecting itself against claims for damages on that guaranty, it maintains a system of supervisions and inspection, as set out in the agreed statement of facts herein. Nor did it appear in that case that the defendants used for bottling the syrup intended for soda fountains, and which was not suitable for that purpose. The court also found that the defendants made the preparation in the identical manner contemplated by the parties. That case is therefore not applicable. In view of the responsibilities of the plaintiff and the right of the purchasers to obtain the identical article, which they desire to buy, the requirements of the plaintiff are reasonable, and in the end, beneficial to the public.

(6) Are plaintiff's acts in violation of the "Clayton Act"? That act provides (section 3):

"That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or re-sale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the

lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.”

This act is invoked by the counsel for the defendants, in view of the agreed statement of facts that:

“The plaintiff, as well as the bottling companies, through whom its syrup is sold to the retail dealer, have refused to sell to the defendants the syrup for the purpose of bottling, although the defendants offered to purchase and pay therefor, and objected to their use of the trade-mark “Coca-Cola” in connection with their bottled product.”

Whether that act is to be construed so as to compel one to sell his wares or manufactures to any one applying therefor cannot be determined in this case, as this is not an action to obtain relief of that nature, and is therefore not involved. Any one interested in that question may consult *Union Pacific Coal Co. v. United States*, 173 Fed. 737, 97 C. C. A. 578, and *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.* (D. C.) 224 Fed. 566, affirmed 227 Fed. 46—C. C. A.—.

The issue in this case, as has been hereinbefore set forth, is whether one purchasing one of the ingredients of a preparation, although it be the chief one, can use it, without permission of the manufacturer, in such a manner that it may injuriously affect the manufacturer, the intending purchaser having the means to adulterate it, and by the use of the trade-mark and name of the manufacturer sell it to the public as the genuine article. It would although not impossible, certainly be a great hardship on the plaintiff, if it were required to permit its preparation to be bottled in every community throughout the United States, no matter how small the purchases for that

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community may be, and maintain such supervision over the bottling as under its system it maintains and deems necessary. By confining its sales to bottling companies doing business in cities so centrally located as to be able to supply the demand for its syrup, and at the same time, enable it to supervise the bottling under its system, it does all which can be reasonably expected of it, and the law demands. The plaintiff, like all other manufacturers and dealers, is no doubt anxious to extend its trade as much as possible, and self-interest, if nothing else, will induce it to permit its preparation to be bottled in as many places as the trade, and its own interests, will justify.

The court is of the opinion that the defendants are guilty of unfair competition, and that the business of the plaintiff, as conducted, is not in violation of any of the "anti-trust acts" of the United States. A decree granting a *permanent injunction* in conformity with the prayer of the bill may be prepared and submitted to the court for approval.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIVISION
OF THE EASTERN DISTRICT
OF KANSAS

THE COCA-COLA COMPANY, Plaintiff,

v.

J. G. BUTLER, J. L. BUTLER, and E. C. BUTLER,
doing business under the firm name of J. G.
BUTLER & SONS, Defendants.

FINAL DECREE.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was *ordered, adjudged and decreed* as follows, viz.:

That the defendants J. G. Butler, J. L. Butler and E. C. Butler, doing business under the firm name of J. G. Butler & Sons, or doing business under the firm, corporate or individual name, and each of them, their and each of their servants, agents and employes, successors, assigns, and all persons claiming or holding under or through them, or either of them, be and are, and each of them is hereby *perpetually enjoined and restrained* from (1) manufacturing, advertising, offering for sale or selling or in any way disposing of beverages in bottles, having or using in connection therewith the crown tops and labels, or either of them, used on the bottles containing "Coca-Cola" as bottled by the plaintiff, The Coca-Cola Company, or its licensees, and furnished by said plaintiff for that purpose to its licensees, or crown tops and labels, or either of them, in imitation or simulation thereof, or (2) manufacturing, advertising, offering for sale or selling, or in any way disposing of beverages in

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bottles, having stamped, printed or in any way marked thereon, or attached thereto, or used in connection therewith, or on, to or with any case, box, crate, stand or package of any kind in or upon which said bottles or bottled beverages are or may be handled, or any contrivance, artifice or device to advertise the said bottled beverages, any name, or names, contrivance, artifice or device in imitation or simulation of the trade-mark or trade-name of "Coca-Cola," or the words "Coca-Cola," or any like word or words, whether alone or in connection with other words or names, but (3) the said defendants are not enjoined by this decree from selling or offering for sale or disposing of any of the beverage "Coca-Cola" bottled by and acquired as a bottled product from the plaintiff or its licensees.

That the said plaintiff do have of and recover from the defendants, J. G. Butler, J. L. Butler, and E. C. Butler, doing business under the name of J. G. Butler & Sons, the profits, gains and advantages which said defendants, or either of them, have received or made, or which have arisen or accrued to them, or either of them, from the infringing by them of the said plaintiff's trade-name and trade-mark of "Coca-Cola" by the making, manufacturing, advertising, offering for sale or selling of any beverage in bottles, having used in connection therewith the name "Coca-Cola" or any like word or words, whether alone or in connection with other words or names, or any other name, contrivance, artifice, or device in imitation of said plaintiff's trade-name and trade-mark of "Coca-Cola," or by the use of the crown tops and labels, or either of them, used on the bottles containing the beverage "Coca-Cola" as bottled by the plaintiff or its licensees and furnished by the plaintiff for that purpose to its licensees, or any crown tops and labels, or either of them, in imitation or simulation thereof.

That upon motion of said plaintiff at any time during the life of this decree, but not otherwise, there be a reference made to the standing master in Chancery

of this court to ascertain and take and state to this court an account of the number of bottles of beverages manufactured and sold, or manufactured or sold by the said defendants, or either of them, and also the gains, profits and advantages which the said defendants, or either of them, have received or made, or which have arisen or accrued to them, or either of them, from infringing the rights of the said plaintiff by the manufacturing and selling or manufacturing or selling of beverages in bottles, having used in connection therewith the tops or labels as aforesaid, or the words "Coca-Cola" or any like word or words, whether alone or in connection with other words or names, or using any name or names, contrivance, artifice or device in imitation of plaintiff's trade-name and trade-mark of "Coca-Cola."

That the said plaintiff on such accounting have the right to cause an examination of the defendants, and each of them, and their and each of their servants, agents and employes, or any other witnesses as may be necessary to take such accounting, and also the production of books, vouchers and documents of which said defendants and their, and each of their attorneys, servants, agents and employes may be possessed, and cause them to attend for such purposes before the said master from time to time as such master shall direct.

That the said plaintiff do recover of said defendants its costs, charges and disbursements in this suit, to be taxed, and for which costs, charges and disbursements execution may issue.

And thereupon in open court the said defendants, and each of them, by their solicitors, *Mehaffy, Reid & Mehaffy*, duly waived service upon themselves of the writ of injunction issuing out of this court, directed to themselves, their agents, servants, employes, successors, assigns and all persons claiming or holding under or through them, or either of them, and

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enjoining them and each of them in manner and form as in the above and foregoing decree specified, and duly accepted notice of said decree and the terms thereof.

JACOB TRIEBER, Judge.

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE NORTHERN
DISTRICT OF ALABAMA
SOUTHERN DIVISION

200 FEDERAL 105

No. 220—FEBRUARY 20, 1912

THE COCA-COLA COMPANY,
v.
DEACON BROWN BOTTLING COMPANY, *et al.*

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
PERCY, BENNERS & BURR, Birmingham, Alabama,
Solicitors and of Counsel for Complainant.

SAMUEL B. STERN, Birmingham, Alabama,
PERKINS BAXTER, Nashville, Tennessee,
For Defendants.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

200 FEDERAL 105

No. 220—FEBRUARY 20, 1912

THE COCA-COLA COMPANY,
v.
DEACON BROWN BOTTLING COMPANY, *et al.*

1. TRADE-MARKS AND TRADE-NAMES (Sec. 93) — VALIDITY—EFFECT — OF REGISTRATION — EVIDENCE.

Evidence held to establish the exclusive use of the words "Coca-Cola" as a trade-mark in interstate commerce by the Coca-Cola Company for more than ten years next preceding February 20, 1905, so that its registration thereafter made it a valid trade-mark, under Act February 20, 1905, c. 592, Sec. 5 (b), 33 Stat. 725 (U. S. Comp. St. Supp. 1911, p. 1461), regardless of the descriptive character of the words.

2. MONOPOLIES (Sec. 21)—SUIT FOR INFRINGEMENT—DEFENSES.

That a manufacturer's sale contracts may be invalid, as in violation of Sherman Anti-Trust Act July 2, 1890, c. 647, Sec. 1, 26 Stat. 209 (U. S. Comp. St. 1901, p. 3200), is no defense to a suit for infringement of its trade-mark.

3. COURTS (Sec. 310)—FEDERAL COURTS—PARTIES—JOINER.

Merely proper or even necessary parties are not required to be joined in a federal court, where the result would be to defeat its jurisdiction.

v. DEACON BROWN BOTTLING COMPANY, *et al.*

4. TRADE-MARKS AND TRADE-NAMES (Sec. 95)—SUIT FOR INFRINGEMENT—PRELIMINARY INJUNCTION.

A preliminary injunction granted to restrain infringement of the trade-mark "Coca-Cola."

In Equity. Suit by the Coca-Cola Company against Deacon Brown Bottling Company and others. On motion for preliminary injunction. *Motion granted.*

Percy, Benners & Burr, of Birmingham, Ala., and *Candler, Thomson & Hirsch*, of Atlanta, Ga., for complainant.

Samuel B. Stern, of Birmingham, Ala., and *Perkins Baxter*, of Nashville, Tenn., for defendants.

GRUBB, District Judge:

The right of complainant to the use of the words "Coca-Cola" as a technical trade-mark under the act of 1881 is doubtful; at least, in view of the fact that the words are admittedly suggestive, and probably merely descriptive of the constituents of the beverage, and not subject to be appropriated as a trade-mark. On motion for a preliminary injunction, the complainant is required to make his right clear, and under this claim has not succeeded in doing so to my satisfaction.

(1) The evidence, however, satisfied me that the complainant and its predecessors in title to the trade-mark have had actual and exclusive use of the combined words "Coca-Cola" for at least 10 years April 1, 1905, the date of the taking effect of the act of February 20, 1905. Under this act the trade-mark was again registered. The act, as construed, provides that 10 years' actual and exclusive user of the trade-mark confers the right to register it as a valid trade-mark, though the words are merely descriptive. For this reason, and in view of the facts shown by the affidavits, I think the complainant is entitled to the benefit of the trade-mark; it having been shown to

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have acquired a secondary meaning, indicative of origin and ownership or manufacture of "Coca-Cola" by complainant, by such user, in addition to the presumption, from a user 10 years before the enactment of the statute, that it had acquired such secondary meaning.

Infringement is shown, if the trade-mark is valid, without conflict. The evidence does not show that a deleterious substance is included in the formula, or purposely introduced into the beverage, and there is not sufficient showing that complainant is disentitled to protection upon that ground.

(2) Alleged invalidity and illegality of the dispensing contract, because of the Sherman Act, is no ground for denying the complainant protection against an infringement of its trade-mark, since awarding such relief does not involve the enforcement of the alleged illegal contract.

(3) The licensees of complainant are not exclusive licensees, and hence not necessary, but at most only proper, parties; and as the Birmingham company is a citizen of Alabama, the making of it a party would deprive the court of jurisdiction of the case, so far as it seeks relief, at least, from unfair competition, and apart from the registered trade-mark. Merely proper and even necessary parties are not required to be joined, when the result is to defeat jurisdiction. Complete justice can be done as between the present parties to the bill.

Complainant has sufficient interest in the subject-matter of the suit to maintain it. It retains title to the trade-mark and is directly interested in the infringement of it, with reference to even bottled goods, since the diminution of sales, by infringement of the bottlers, reflects on its sales to the bottlers.

The act of February 20, 1905, does not seem to me to be open to the constitutional objections asserted against it by respondents.

(4) The probability of complainant's ultimate success seems to me great enough to justify the issue of

the temporary injunction. Allowance of damages for infringement is an inadequate remedy to plaintiff, because of the impossibility of any accurate measurement of its accrued damages and the uncompensated inroad on its good will by continued use of defendant's mark. The same may be said of defendant's right to indemnify on an injunction bond. However, the defendant can continue its business, using a different mark, or none at all, so that there will not be a total interruption of its business; and the trial of the cause can be speeded to final order by any reasonable decree desired by defendant, and all reasonable protection given it by requiring the execution of a proper injunction bond.

I think the greater probability of injury, not capable of being indemnified against, is with the denial of the temporary injunction.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN
DISTRICT OF ALABAMA,
SOUTHERN DIVISION

THE COCA-COLA COMPANY, Complainant,
v.
DEACON BROWN BOTTLING COMPANY, *et al.*,
Respondents.

DECREE.

This cause coming on for final hearing, and being regularly called, *it is ordered, adjudged and decreed* by the Court that the temporary injunction heretofore rendered in said cause, be and the same hereby is made in all respects permanent.

It is *further ordered, adjudged and decreed* that the complainant has in open court remitted its claim for any damages.

It is further ordered, adjudged and decreed that all the costs for this proceeding be taxed against respondents, for which let proper execution issue.

W. I. GRUBB, Judge.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DIS-
TRICT OF OKLAHOMA

216 FEDERAL 264

JULY 15, 1914

THE COCA-COLA COMPANY,

v.

BRANHAM, *et al.*

1. TRADE-MARKS AND TRADE-NAMES 70 — UNFAIR
COMPETITION—ACTS CONSTITUTING.

Plaintiff prepared and sold a beverage called "Coca-Cola" and defendants one called "Koke," both of which were made from syrups mixed with carbonated water, put up in bottles, and also served by the glass. Defendant's bottles were slightly taller than plaintiff's. The bottles of each party had a tin cap over the stopper, with the name of the beverage in script thereon, but it was the custom of dealers in serving the two beverages to remove the tin caps so that the purchaser did not see the name. Defendants sold exclusively to dealers. The color of the two beverages was similar, but it appeared that there were 181 beverages having practically the same color as Coca-Cola. Defendants neither sold Koke for Coca-Cola nor advised their customers to do so. HELD, that defendants were guilty of no unfair competition.

2. TRADE-MARKS AND TRADE-NAMES 73—ORIGIN OR
ADOPTION OF NAME.

That certain purchasers of "Coca-Cola," prepared and sold by plaintiff, referred to it as "Koke" did not entitle plaintiff to enjoin defendants from selling a somewhat similar beverage under the name "Koke," on the theory that by adoption or user the name "Koke" had become a secondary trade-name of plaintiff's product, where plaintiff had neither adopted nor used such name in connection with its beverage.

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In Equity. Suit by the Coca-Cola Company against Joseph D. Branham and another, partners doing business as the Sand Springs Bottling Works. *Temporary restraining order dissolved, and bill dismissed.*

Candler, Thomson & Hirsch, Atlanta, Georgia, *Dillard & Blake*, Tulsa, Oklahoma, for plaintiff.

Randolph, Haver & Shirk, Tulsa, Oklahoma, for defendants.

YOUMANS, District Judge:

This is a suit in equity to enjoin the defendants from infringement of the trade-name of plaintiff, and to prevent unfair competition. There is no evidence tending to show that defendants have been guilty of infringement of plaintiff's trade-name. The facts with regard to the allegation of unfair competition are as follows: The trade-name of plaintiff's product is "Coca-Cola." The defendants prepared and sold a beverage which is called "Koke." Both beverages are made from syrups mixed with carbonated water. Both are put up in bottles, and are also served by the glass at cold drink stands. The bottles containing Koke are a little taller than those containing Coca-Cola. The bottles containing each beverage have a tin cap over the stoppers. The words Coca-Cola and Koke appear in script on these tin caps. Coca-Cola and Koke are similar in color. Defendants sold to dealers exclusively. It appears in testimony that in some instances persons wanting Coca-Cola would say, "Give me a dope," or "Give me a Koke." There is also proof to the effect that two or three dealers in Tulsa gave Koke to their customers when they had called for Coca-Cola. There is no proof that the defendants sold Koke for Coca-Cola, or advised their customers to do so. In that respect this case differs from the case of Coca-Cola Co. v. Gay-Ola Co., 200 Fed. 720, 119 C. C.

A. 164. In that case the facts are set out as follows:

“Defendant claimed to have discovered complainant’s formula, and to be in fact making the same thing. It adopted for its product * * * the word ‘Gay-Ola.’ It proceeded to bring this product into public notice by some advertising under its own name and by some other methods not criticized by complainant, all to an extent not distinctly shown by the record. It also wrote a series of letters to bottling companies which were engaged in bottling Coca-Cola, which letters were to the effect that it would sell the bottler Gay-Ola for a less price than he was paying for Coca-Cola; that the two articles were just alike, and no one could tell the difference; that the bottler could, if he wished, substitute Gay-Ola for Coca-Cola and his patrons would never know the difference; that several bottlers, who had been handling Coca-Cola, were doing this successfully and without discovery; and that, if the bottler desired, defendant would ship him Gay-Ola in plain, unmarked packages, so that his dealings with defendant would not be observed. Several of the letters in the record are of this substantial effect, though they use different forms of expressions, and some only by hint and innuendo convey the invitation to substitute and so to deceive the final purchasers. Defendant also sent letters to soda fountain proprietors, setting out the cheap price and the merits of Gay-Ola and its identity with Coca-Cola, and quoting from a testimonial of a soda fountain proprietor: ‘No one can tell it from Coca-Cola, and I sell it for Coca-Cola, and every one says I have the best Coca-Cola in the city.’ On these letters, the defendant added the postscript: ‘For your information, beg to state that we are shipping twenty-one Coca-Cola bottlers. “Nuff said.” ’ ”

Upon those facts it was held by the Court of Appeals for the Sixth Circuit that a case of unfair

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competition had been made out in that defendant sold its product "as and for Coca-Cola." Nothing appears in the testimony in this case connecting defendants with any effort to sell their product for Coca-Cola. There is nothing to show that they had such intention.

In the case of *Coats v. Merrick Thread Co.*, 149 U. S. 562, 13 Sup. Ct. 966, 37 L. Ed. 847, the court said:

"Rival manufacturers may lawfully compete for the patronage of the public in the quality and price of their goods, in the beauty and tastefulness of their including packages, in the extent of their advertising, and in the employment of agents, but they have no right, by imitative devices, to beguile the public into buying their wares under the impression they are buying those of their rivals."

That was a suit charging unfair competition in the manufacture and sale of thread. It appeared in evidence that dealers had delivered to purchasers the thread of the defendants when they had been asked for that of plaintiff. On that point the court said:

"We think the defendants have clearly disproved any intention on their part to mislead the dealers who purchase of them. Indeed, such dealers could not possibly fail to know what they were buying, and the fraud, if any, was practiced on the buyer of a single or a small number of spools, who might be induced to purchase the thread of the defendants for that of the plaintiffs."

Further in the opinion the Court said:

"If the purchaser of such thread desires a particular make, he should either call for such, in which case the dealer, if he put off on him a different make, would be guilty of fraud, for which the defendants would not be responsible, or should examine himself the lettering upon the spools."

It is true that it appears in testimony that it is the custom of dealers, in serving the two beverages, to

remove the tin caps from bottles, so that the purchaser does not see the name thereon, but that would be true as to any beverage of like or similar color to Coca-Cola. According to the testimony of plaintiff's agent, there are 181 beverages having practically the same color as Coca-Cola. Defendants cannot be held responsible for what their customers did without aid, suggestion, or inducement from them.

Plaintiff also argues that "Koke" has become the "secondary name" of its product, because it appears from the proof that some persons desiring that product say to the dealer, "Give me a Koke." A trade-name may be acquired by adoption or user. In their brief, counsel for plaintiff quote the following from 38 Cyc. 765:

"Trade-names are acquired by adoption and user and belong to the one who first used them and gave them a value."

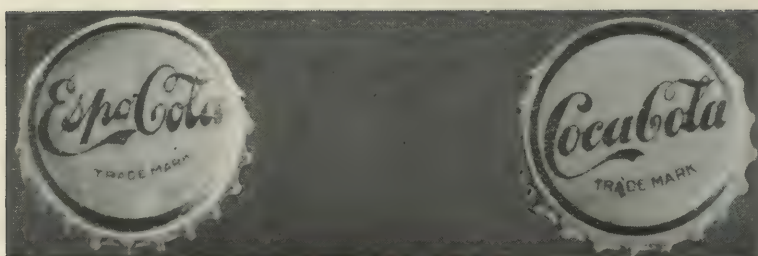
But plaintiff has never used the word "Koke" in connection with its product. It has taken and used the name Coca-Cola. The use of the word "Koke," as applied to the product of the plaintiff, has been, so far as the testimony shows, by persons upon their volition without being moved thereto by defendants. If the use of the name had been observed by defendants, and it was afterwards adopted by them with the purpose and intention of taking advantage of that fact and to engage in the manufacture and sale of a beverage and call it "Koke," and sell it "as and for Coca-Cola," then a case of unfair competition would undoubtedly be made out.

Assuming that there is such a thing as a secondary trade-name, the right to its exclusive use must depend upon adoption and use just as in the case of a primary name. There is such a thing as a name having acquired a secondary meaning. *Elgin National Watch Co. v. Illinois Watch Case Co.*, 179 U. S. 665, 21 Sup. Ct. 270, 45 L. Ed. 365; *Bates Mfg. Co. v. Bates Numbering Machine Co.* (C. C.) 172 Fed. 892. But the facts in this case do not call for an application of

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that rule. The relief sought here is the prohibition of the use of a name that the defendants have neither adopted nor used. There is nothing to show that the defendants have neither adopted or were using the name for the purpose of selling the beverage manufactured by them for Coca-Cola.

The temporary restraining order will be dissolved and the plaintiff's bill dismissed.



IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE SOUTHERN
DISTRICT OF NEW YORK

2 T. M. R. 234

JUNE 3, 1912

THE COCA-COLA COMPANY,
v.
WILLIAMSBURGH STOPPER COMPANY, *et al.*

THE COCA-COLA COMPANY,
v.
WITTEMANN BROS., CAVALIERE, *et al.*

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
HARRY D. NIMS, New York City,
For Complainant.

KIERNAN & MOORE and SPROULL, HARMON & SPROULL,
For Defendants.

THE COCA-COLA COMPANY

SOUTHERN DISTRICT OF NEW YORK

2 T. M. R. 234

JUNE 3, 1912

THE COCA-COLA COMPANY,
v.
WILLIAMSBURGH STOPPER COMPANY, *et al.*

THE COCA-COLA COMPANY,
v.
WITTEMANN BROS., CAVALIERE, *et al.*

1. UNFAIR COMPETITION—IMITATION OF FORM OF MARK.

The name "Espo-Cola" is not in itself an infringement upon the trade-mark "Coca-Cola," but the use of a style of script in imitation of that employed by the complainant will be enjoined.

2. UNFAIR COMPETITION—IMITATION OF COLOR OF BEVERAGE.

The manufacturer of a beverage to which a brown color is imparted by the use of caramel cannot enjoin the manufacturer of another beverage from coloring his article in the same color and shade as the complainant's whether by the use of the same or of any other coloring medium.

In Equity. On motions for preliminary injunctions.

Candler, Thomson & Hirsch, Atlanta, Georgia, and
Harry D. Nims, for complainant.

Kiernan & Moore and *Sproull, Harmon & Sproull*,
for defendants.

HOUGH, J.:

This matter having been heard both on the original motion and on the settlement of an interlocutory decree, two questions were reserved for further consideration:

1st. Whether the defendant Esposito should be restrained from using his trade-mark "Espo" written or printed in that particular form of script long used by complainant, and,

2nd. Whether complainant is entitled to prevent defendants from coloring their product with caramel so as to produce that brown color said to be characteristic of Coca-Cola.

As to the first point I am now convinced that the complainant is entitled to the relief asked. "Cola" is admittedly a descriptive word in which complainant is entitled to no special or exclusive right. Nevertheless, the affidavits submitted are fully persuasive to the effect that "soft drinks," to which the word "Cola" can properly be applied, owe, if not their introduction, certainly their popularity wholly to the long-continued efforts of complainant.

Esposito may use the word "Cola" and may use the word "Espo," but when he expresses either or both of those words in a style of script commercially unheard of except for advertising purposes, I am persuaded that he goes too far.

As to the second point, my conclusion is against the complainant, and for the following reasons:

1. Despite the affidavit of Dr. Chandler, I can not persuade myself that caramel is wholly destitute of flavoring properties. I do not find this fact asserted in the dictionaries, and it is well known that caramel is commonly used in domestic cookery, and that (as domestically prepared, at all events) it has flavor I am sure. Since preliminary injunctions are always matters of grace, I think I am entitled to consider even something based on personal experience.

2. There is a complete lack of direct authority upon the point urged by complainant's counsel, and on

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familiar principles, this might well be considered enough to avoid a preliminary injunction where no immediate and overwhelming injury is to be expected.

3. There are reported decisions in which the legal difficulty of approximating even for wrappers any given color is dwelt upon. To be sure, the door is left open for further consideration by *Leschen Co. v. Broderick, etc., Co.*, 201 U. S. 166, but there are very appropriate remarks on the danger of permitting the appropriation of color in *Diamond Match Co. v. Saginaw Match Co.*, 142 Fed. Rep. 727. The litigation over Elastic Sea Drawers is a perfect instance of the uncertainty at present attending the matter (134 Fed. Rep. 366, 154 Fed. Rep. 914, 158 Fed. Rep. 1020). In this last series of litigations I am respectfully of the opinion that the decision of the fourth circuit is the better.

4. The papers submitted on these motions contain no evidence of any immediately expected injury; it is not shown that any damage has occurred, and they do not persuade me that any damage will occur. This is a good reason for refusing a preliminary injunction.

5. The foregoing positions are mostly negative, and do not really advance the discussion of a question that is sure to come up hereafter.

How far the courts can go—or should go—in safeguarding one man's private business is a very delicate question, and many of the solutions hitherto attempted are far from happy. Instances of this in the appellate court of our own circuit are the cases affecting *Charteuse*, *Dr. Reed's Cushion Shoe*, and within the last few weeks the as yet unreported decision in the matter of the *Waterman Pen Company*.

It is in my opinion a mistake for courts to go beyond the broad and very general principles of the law of unfair competition.

Being also of opinion that, more and more, men of experience are departing from the doctrine that the basis of unfair competition law is the protection of

the public, and coming to the firm proposition that what is entitled to protection is complainant's property rights, the basic question is always this: What is the thing which the alleged infringer has the right to make and sell?

Here the thing is to be dissociated from all such extraneous matter (however important) as trade-marks, packings, wrappers, dress, advertising, and the like.

Every observer has probably noted some things in common use made by many manufacturers, yet resembling each other, especially in color; thus there are many white soaps, red dentifrices, and green hair-washes, and many people know that these colors are no essential. In this prevailing similarity of color there is a certain amount of imitation. I do not think it can be avoided, not that it should be prevented. If one manufacturer can appropriate a brown summer drink others in other businesses can do the like—the primary colors are soon exhausted, and it needs very little of the spirit of prophecy to see the courts regulating shades of color as between different proprietors, with results beside which some judicial efforts in the way of labels would rank very high.

As applied to this case, I think that not only are Cola drinks open to the world, but known Cola drinks are similarly open, or, in other words, that the unpatented article made by complainant is a thing (color and all) which anyone can make and vend in competition with complainant, and ought to be permitted so to do.

It seems to me that the bread cases, of which the last is *Fox Co. v. Best Baking Co.*, 209 Mass. 251, measurably support the statement above insufficiently made.

The injunction orders have been signed along the lines indicated.

NOTE.

Since the filing of the memorandum herein on June 3, 1912, the complainant has called my attention to

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the fact that its counsel considers that the use of caramel or any other particular substance “to produce that brown color said to be characteristic of Coca-Cola” is unimportant.

As I now understand it, the proposition is that complainant wishes to prevent defendants from coloring their product (with anything) so as to produce said brown color. If the proposition considered be stated as the complainant now states it, my conclusion would be the same as before. As a matter of fact, however, complainant does use caramel and so do the defendants; caramel happens to be brown, though doubtless it may be of many shades of brown. I think the defendants may choose and use the same shade of brown as does the complainant just as freely as any butter manufacturer can make any butter of the same shade of yellow as that, affected by the most popular brand he knows of—butter, I believe, being naturally whitish in color, at most seasons of the year.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF NEW YORK

THE COCA-COLA COMPANY,
Complainant,

v.

WILLIAMSBURGH STOPPER
CO., THOMAS ESPOSITO,
doing business as THE ESPO
BOTTLING CO., and WITTE-
MANN BROTHERS,
Defendants.

FINAL DECREE
OF
INJUNCTION.
E. 9-133.

This cause coming on to be heard on complainant's motion for a final decree, the complainant appearing by its solicitors *Candler, Thomson & Hirsch*, of Atlanta, Georgia, and *Harry D. Nims* and *Colby & Goldbeck*, of New York City, and the defendant Williamsburgh Stopper Co. appearing by *Sproull, Harmer & Sproull*, of New York City, and it appearing to the court that the issues involved herein have been settled and agreed upon by the parties hereto, and the defendant Williamsburgh Stopper Co. agreeing to consent to the entry of a final decree in the form following: Now, on motion of *Harry D. Nims*, of counsel for the complainant, it is

Ordered, adjudged and decreed that the defendant Williamsburgh Stopper Co., and its agents, servants, clerks, employees, and all persons claiming under, by or through it, and each of them, be and they hereby are perpetually enjoined and restrained:

1. From in any manner manufacturing, selling, or offering for sale any label, cap, stopper, or advertising matter containing any colorable imitation of

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the name "Coca-Cola," or of the form in which the same name has long been and now is used by complainant;

2. From any imitation of complainant's name, label, cap, or stopper, so contrived as to lead to the belief, or to be calculated to lead to the belief, that the article to which the same is attached is or contains the product manufactured and sold by the complainant, and from representing in any manner or form, directly or indirectly that any soft drink or beverage not manufactured by the complainant herein is "Coca-Cola," and from attempting to pass off, in any way, any syrup or beverage not made by the complainant herein, as and for "Coca-Cola."

3. From in any manner manufacturing, selling, or offering for sale, any caps, labels, stoppers, or advertising matter containing the name "Espo-Cola" in any form which is a colorable imitation of complainant's trade-mark.

JULIUS M. MAYER,
Judge of the U. S. District Court.

We consent to the entry of the foregoing decree.

Sproull, Harmer & Sproull,
Atty. for Deft., Williamsburgh Stopper Co.

Candler, Thomson & Hirsch,
Colby & Goldbeck,
Harry D. Nims,
Solicitors for Complainant.

Endorsed: U. S. District Court, S. D. of N. Y., filed
Jan. 28, 1914.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } ss:

I, ALEXANDER GILCHRIST, JR., Clerk of the District
Court of the United States for the Southern District

v. WILLIAMSBURGH STOPPER COMPANY, et al.

of New York, do hereby Certify that the Writings annexed to this Certificate, namely, Final Decree of Injunction against Williamsburgh Stopper Company, filed January 28, 1914, in the case entitled The Coca-Cola Co., against Williamsburgh Stopper Co., Equity No. 9-133, have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said original.

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of the said Court at the City of New York, in the Southern District of New York, this 22nd day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of the Independence of the said United States the One Hundred and Forty-Seventh.

(Seal)

ALEX. GILCHRIST, JR., Clerk.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

THE COCA-COLA COMPANY,
Complainant,

v.

WILLIAMSBURGH STOPPER
CO., THOMAS ESPOSITO,
doing business as THE ESPO
BOTTLING CO., and WITTE-
MANN BROTHERS,
Defendants.

FINAL DECREE
FOR
INJUNCTION
E. 9-133.

This cause coming on to be heard on Complainant's motion for a final decree, the Complainant appearing by its solicitors, *Candler, Thomson & Hirsch*, of Atlanta, Georgia, and *Harry D. Nims*, and *Colby & Goldbeck*, of New York City, and the defendant Wittemann Brothers appearing by *Kiernan & Moore*, of New York City, and it appearing to the Court that the issues involved herein have been settled and agreed upon by the parties hereto, and the defendant Wittemann Brothers agreeing to consent to the entry of a final decree in the form following: Now, on motion of *Harry D. Nims*, of counsel for the Complainant, it is

Ordered, Adjudged and Decreed that the defendant Wittemann Brothers, and its agents, servants, clerks, employees, and all persons claiming under, by or through it and each of them, be and they hereby are perpetually enjoined and restrained—

1. From in any manner manufacturing, selling, or offering for sale any label, cap, stopper, or advertising matter containing the name "Coca-Cola" or any colorable imitation thereof, or of the form in which the same name has long been and now is used by the Complainant;

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2. From any imitation of Complainant's name, label, cap, or stopper, so contrived as to lead to the belief, or to be calculated to lead to the belief, or to be calculated to cause the public to believe, that the article to which the same is attached is or contains the product manufactured and sold by the Complainant, and from representing in any manner or form, directly or indirectly that any soft drink or beverage not manufactured by the Complainant herein is "Coca-Cola," and from attempting to pass off, in any way, any syrup or beverage not made by the Complainant herein, as and for "Coca-Cola."

January 7, 1914.

J. M. MAYER,
United States District Judge.

We consent to the entry of the foregoing decree.

Kiernan & Moore,
Solicitors for Deft. Wittemann.

Endorsed:

U. S. District Court, S. D. of N. Y., filed Jan. 15,
1914.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } ss:

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate, namely Final Decree of Injunction against Wittemann Bros., filed Jan. 15, 1914, in the case entitled The Coca-Cola Company v. Williamsburgh Stopper Company, *et al.*, Equity 9-133, have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

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In Testimony Whereof, I have hereunto subscribed my name and affixed my seal of the said Court at the City of New York, in the Southern District of New York, this 22nd day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of the Independence of the said United States the One Hundred and Forty-seventh.

ALEX. GILCHRIST, JR., Clerk.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

No. 34—IN EQUITY

ON FINAL HEARING

THE COCA-COLA COMPANY, Complainant,

v.

FRANK F. MYKRANTZ, Defendant.

SATER, District Judge:

The charge is unfair competition. The case was well tried and ably argued. Excepting certain affidavits and two depositions, the evidence was all taken in open court. Whatever advantage accrues from acquaintance with local situations is to a considerable degree present. The several drug stores and places of business specifically mentioned in the record, in which soft drinks are sold, are in well known localities. The defendant's store at the southwest corner of Poplar Avenue and North High Street and at No. 23 South High Street, and those of Hatton Bros., The Perfecto Cigar Company, The Busy Bee Candy Kitchen, Foeller, May Drug Company, Wm. H. Syfert Company, and the Wendt-Bristol Company are passed by me one or more times almost daily in going to and from my work when in the City. The Park Street Pharmacy is also familiarly known, and on one of my frequent routes. Notwithstanding the advantages thus existing for an understanding of the evidence, the determination of the vital issues in the

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case is not free from embarrassment. The credibility of witnesses is involved. All are not equally credible, whether tendered by one side or the other, nor have all had the same, or equal, or full opportunities of knowing the matters concerning which they testified. In some instances interest and ill feeling—notably in the case of Massey and Mykrantz—were manifest. The case calls for a critical analysis of the evidence. The entire record has therefore been re-examined.

Diverse citizenship exists. The plaintiff corporation has operated since sometime in 1892. Its business, extensively conducted in North America, to a considerable extent in South America, and in a limited way in Australia and the Sandwich and Philippine Islands, is large. Its cost of advertising in 1905 was \$280,000.00. In each of the past three years it has been as much as \$1,200,000.00. Its annual sales in Columbus aggregate 20,000 gallons; in Ohio, 300,000 gallons. The immediate, but not the only purpose of these recitals is that the substantial character of the jurisdictional averment in the bill is to be tested, not by the mere immediate pecuniary damage resulting from the acts of which complaint is made, but by the value of the business to be protected and the rights of property which plaintiff seeks to have recognized and enforced. *Bitterman v. L. & N. R. R.*, 207 U. S. 205, 225; *Texas & Pac. Ry. Co. v. Kute-man*, 54 Fed. Rep. 547, C. C. A. 5; *Foster*, Fed. Pr., 4th Ed., 90, 98, *et seq.* The court has jurisdiction.

It was stipulated that "There is no issue made in this case regarding the validity of the trade-mark 'Coca-Cola.' " The defense urged, however, that plaintiff did not have a right to the use of the name "Coca-Cola" and may not complain of unfair competition in that it does not come into court with clean hands, on account of the name being misleading and deceptive. The weight of authority seems to be that such a defense need not be affirmatively pleaded. 38 Cyc. 897; 21 Ency. Pl. & Pr. 763, 764. Neither the

evidence nor prior adjudications to which this court should give heed sustain the defense thus made. See the discussion in *Nashville Syrup Co. v. Coca-Cola Co.*, 215 Fed. Rep. 527, C. C. A. 6; *U. S. v. 40 Barrels and 20 Kegs of Coca-Cola*, 215 Fed. Rep. 535, 544, C. C. A. 6; *Coca-Cola Co. v. Nashville Syrup Co.*, 200 Fed. Rep. 153.

Counsel are not agreed as to the rule of evidence to be satisfied by plaintiff in order to win. The action is based essentially upon fraud. Fraud must be proved. If it appears that the defendant was destroying or attempting to destroy an honest business by dishonest means, the action must be sustained. The gravamen of the complaint is a fraudulent purpose on defendant's part, carried into action, to foist upon the public a spurious article as that of plaintiff's and thus to deprive the plaintiff of the profits which it would otherwise receive. Fraud may be inferred from facts, but they must be such as to warrant the inference. On account of the character of the action, the proof must satisfy the court. *N. K. Fairbank Co. v. Windsor*, 124 Fed. Rep. 200, 202, C. C. A. 2. The evidence must clearly preponderate in plaintiff's favor. *Hostetter Co. v. Bower*, 74 Fed. Rep. 235. It must be clear and convincing. *U. S. v. Iron and Silver Min. Co.*, 128 U. S. 673. The plaintiff is not, however, required to establish its case beyond a reasonable doubt.

The defendant claims that he regarded Coca-Cola as deleterious, as a habit-forming drink. The cross-examination of the witness Wesener went in part to that point, but against the defendant. The evidence does not warrant the claim. The ruling was adverse to a like claim in *U. S. v. 40 Barrels and 20 Kegs of Coca-Cola*, 215 Fed. Rep. 535, C. C. A. 6.

At the conclusion of the evidence it was stated from the bench that the analyses made by plaintiff's chemists would be accepted. Further reflection and a reconsideration of the evidence of the experts leave that conclusion undisturbed. The correct analysis of

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Coca-Cola is attended with difficulty. Defendant's counsel concede the test to be "a delicate one." (Brief p. 48.) The conclusion reached carries no reflection on the experts offered by the defendant. Neither of them had analyzed Coca-Cola prior to his being brought into the case. The plaintiff's witnesses had each had a large experience in testing the article in question and substitute therefor. Caspari was an intelligent and impressive witness. Wesener and Fuller obtained from analyses of Coca-Cola the same results as he did. Fuller was in some degree handicapped by his evidence in the Government case brought at Chattanooga—portions of which he says were incorrectly abstracted. He states that he has learned since he then testified and knows that he erred at that time in certain respects; but the result would be the same were his evidence wholly disregarded. Thurston's tests as regards the determination of the several ingredients of Coca-Cola could hardly have been satisfactory to himself. Withrow was learned and sincere, but was borne down by the weight of the evidence of men equally learned and of greatly wider experience in the testing of the article in question. It is not shown or claimed that the constituents of Coca-Cola are other than those stated by the plaintiff's experts. It is not shown that the analyses made by Caspari of the samples sent him were incorrect. The liquids so sent were not the plaintiff's product. The defendant's contention that the trouble between him and Massey arose out of the refusal of the former to employ Coca-Cola signs for advertising purposes and his claim that Massey never accused him of selling a substitute for Coca-Cola, cannot be accepted. The use of such signs is by no means universal. If the refusal to use them ordinarily provoked a hostility such as this case betrays, Massey must have had many quarrels on his hands. Considering the large sales of Coca-Cola, it is improbable that a feeling so deep-seated would have arisen from a source of business, which withholding

in some degree profits from the plaintiff, diminished the profits of the defendant. It must be that Massey incited his employer to investigate the defendant's conduct of his business as regards his sales of Coca-Cola. It was his duty to report to plaintiff his *bona-fide* belief, if he had it, in an invasion of its property rights. On account of his length of service with it, it must have known his characteristics and degree of trustworthiness. It can hardly be that it would hurriedly embark or persist in expensive litigation to gratify the animosity of a salesman, who is apparently quick of temper, and, when angry, prone to the use of reprehensible language. It is in evidence that the defendant also at times employed unseemly epithets. But whatever may have been the language used by these parties and whatever may have been their feeling of mutual ill will is not determinative of the case and should not distract the mind of counsel or the court from the real issues. Stutson in his evidence alludes to his effort as an intermediary to patch up the differences between Massey and Mykrantz, but he does not state the cause of such differences (pp. 562-563). Some three or four years prior to the trial the defendant ordered Massey from his store. The latter testifies that he called in Mykrantz in 1904 and later discovered that he was diluting his Coca-Cola, that he told him of this and that he was not selling genuine Coca-Cola as manufactured by the plaintiff, that this subject was discussed two, three or four years, that he repeated his charge that the article sold by the defendant was not genuine, and that some three or four years ago his accusations culminated in Mykrantz' ordering him out of his store. Mykrantz testified (p. 641) that Massey never accused him of selling a substitute for Coca-Cola. He knew, however, when Harrington, Barthelow and Friend visited his cellar on September 12, 1914, that he was suspected. He says (p. 627) that he gave a sample to Harrington with the request that he take it to his chemist, as he would like to have

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the matter settled, because he understood the Coca-Cola Company had sent detectives to his different stores and he wished by an analysis to stop the matter forever, as it was becoming rather worrisome. In an affidavit he made oath that when he ordered Massey out of his store, the latter had called for a drink of Coca-Cola, and, after testing it and placing the glass on the counter, said in a loud voice several times, "This is not Coca-Cola;" that at the same time he gestured and caused considerable commotion; that he had been guilty of such conduct at different prior times within a period of probably a year; that he was thereby injuring the defendant's business, and in consequence he was compelled repeatedly to order him from the store. He says these things were reported to him by Miss Davis, a clerk; but the fact remains that he had knowledge of the accusation. He corroborates Massey that the break between them was due to the latter's repeated accusation of the sale of a spurious article and not on account of a refusal to display signs. The plaintiff did not act solely on the representations (if any) of Massey, whatever they may have been. It acted with deliberation. It employed detectives, who visited plaintiff's stores in quest of information in 1913. It later sent Friend in 1914 to ascertain, if possible, the real situation. It employed chemists to analyze the samples which Friend claimed he obtained, and not until after these things were done and the results of its efforts known was the present suit brought.

Counsel rightfully agree that if the defendant was engaged in the fraudulent practices attributed to him, his operations would be conducted secretly. It is also reasonable that, if thus guilty, he would purchase and dispense some genuine Coca-Cola to disarm suspicion and render detection more difficult. Counsel for the respective parties apply the rule of secrecy to the evidence adduced by the other, but, as it seems to me, neither concedes its full force when applied to that offered in behalf of his own client.

The rule militates against so much of the evidence of the Pinkerton Detectives as charges that defendant's employes admitted that the defendant made his own Coca-Cola and that they could not sell it in quantity because they had not the ingredients on hand to make a new supply. It is possible but not probable that such statements were made; and yet the detectives were more impressive as witnesses and of a higher type than are ordinarily men of their occupation. That the Pinkertons did not buy in quantity is borne out by the evidence on both sides. The defendant's witnesses say that none of them ever sold Coca-Cola from the container to be taken from the store, excepting to Friend and in one or two other specified instances. They deny that they ever refused or were told to refuse such a request. The detectives were sent for the express purpose of making such purchases. They say they attempted to buy at each store and were refused. That they were here and visited the stores cannot well be doubted. There are details mentioned, incidentally or otherwise, such as the date of the opening of the store at Main and High Streets, of which they could not have had knowledge had they not been here. That a year later two samples should have been procured without difficulty from each store also operates against the evidence of the detectives. Their efforts, however, lacked adroitness and were such as were liable to meet with defeat, if guilty knowledge was present on the part of the defendant's employes and they wished to shield him.

The rule of secrecy also disposes of much of the evidence offered by the defendant. It is improbable that, if substitution was going on, it should have been known to more than one or two of the defendant's employes; and, as the central store was at No. 23 South High Street, from which Coca-Cola, real or alleged, was sent out from time to time to one or more of the stores, as the case may have been, the person or persons who knew of the substitution, if made,

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would naturally be located at that store. A large portion of the evidence given by defendant's employes is negative in character and for practical purposes a negligible quantity; they did not know of any substitutes or adulteration, because they did not have the opportunity of knowing.

The evidence given by certain numerous witnesses that what was sold over the counter tasted and looked like Coca-Cola is not influential. On the cross-examination they freely admitted that they were not experts as to its taste or color. All they could say was that to their knowledge no substitute had been prepared or placed in the containers and that what they tasted and saw tasted and looked like Coca-Cola. Whether it was or not, they were not sufficiently expert to determine. There was ample opportunity to prepare a substitute without their knowledge. Massey by experiences was by far the best qualified of any witness that appeared to determine whether the article sold was the genuine or spurious. It was a part of his business to know. In the light of the evidence, his judgment as to the spurious character of the article sold was correct.

It is freely admitted that Friend obtained from each of the defendant's five stores two samples of the liquid sold from containers as Coca-Cola. The happenings as narrated by him. Hirsch and Bigelow are quite fully corroborated in their essential and to a considerable extent in their non-essential details by defendant's employes. It is true that in one instance it is said the purchaser requested the addition of simple syrup to the article purchased and that such addition was made, but this is not sustained by the weight of the evidence. The very purpose of the purchase was to get Coca-Cola just as it came from the container. But were it otherwise, it does not appear that the result of its analysis would have been different. Friend went about his investigation in a thorough, methodical and business-like way, well calculated to be effective. He and his associates have

told of their care to obtain and preserve samples in clean bottles, of their manner of sealing and labeling them, of the caution exercised to prevent tampering with them and of their final shipment in their sealed condition to Caspari. His evidence, in so far as it touches the condition of the bottles when they were received by him, corroborates them. Friend testified freely and with much detail. He impressed me as a truthful witness. Testing his statements by the disclosures of defendant's witnesses, in so far as he was brought in contact with them, confirms and compels such belief. Having testified truthfully as to how he procured the samples and as to the incidents occurring when some of them were obtained, why should his evidence, or that of Hirsch and Bigelow, not be accepted as to the handling and final disposition of the samples after their procurement? No one has said that he or any one else substituted any decoction for them, or adulterated, or in any manner tampered with them, or that any one of them possessed sufficient knowledge to prepare a substitute, or to add a substance which would destroy "Merchandise No. 5." There is an entire absence of evidence, direct or circumstantial, on all these points. If he and his associates, or any of them, deliberately switched some substitute for the samples, or added or subtracted some ingredient, the offending party or parties were guilty of most despicably fraudulent conduct for no other purpose than to injure the defendant. Such baseness cannot be implied in the absence of evidence upon that point, because fraud must be proved, not presumed. That his helpers were drawn from the class of the employed cannot be held against them. Were it otherwise, the same rule would play havoc with the witnesses for the defendant. Moreover, it is yet to be shown that the employed, the laboring class, the common people, are not as truthful as others. No substance is even suggested which could have been substituted, for the samples or which could have been placed in them, whose analysis

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would yield the result obtained by Caspari. The evidence of Friend and his helpers must be accepted as true. Whatever contradictions and variations are found are not sufficient to impair its force. From this it follows that the defendant was selling another as Coca-Cola.

The conclusion that the defendant was guilty of palming off as Coca-Cola some other article does not rest wholly on Massey's ability in tasting or the evidence of Friend and his assistants. The defendant caused various drinks to be prepared in his cellar. Fismer was one of his employes that mixed or prepared them. Fismer was in a position to know what was going on. He may have been discharged. He may have felt hostile about it. But, when he testified, he attempted, in a lame and mistaken way, it is true, to shield his former master. His evidence is so evasive as to defeat its purpose. To gather its full import it must be taken as a whole—every question and answer just as the one was propounded and the other given. Had he freely confessed his guilty participation in the preparation of a substitute, using an extract or other ingredient whose resultant would simulate Coca-Cola, and had he expressly charged that the defendant directed such preparation and caused the product to be sold, his evidence would have been scarcely less hurtful to the defendant than it was in the condition in which he left it. His willingness to protect the defendant may have been due to a fear of discrimination against himself on account of his having disclosed the secrets of his former employer's business, or on account of anger due to what he deemed a betrayal of his confidence, but his demeanor and evidence convince me that he admitted to others his part in fraudulent practices in defendant's store.

Doubt was entertained when the evidence was coming in as to the competency of that offered as to the extent of sales of Coca-Cola by other drug stores and other places of business. A determination of the

admissibility of such evidence and of the weight to be given to it is not, in my judgment, essential to the decision of the case. In view, however, of counsel's extended discussion of its competency and its hearing, if the ruling on its admissibility be favorable to the plaintiff, it merits the court's consideration. A wide latitude is given to the admission of evidence in cases of fraud, for the reason that fraud is usually of such a nature that it is impossible to prove it by direct and positive evidence. *Elliot, Ev.*, Sec. 814; *Butler v. Watkins*, 13 Wall. 456, 464. The liberality which prevails in the admission of evidence is thus stated in *Holmes v. Goldsmith*, 147 U. S. 150, 164:

“As has been frequently said, great latitude is allowed in the reception of circumstantial evidence, the aid of which is constantly required, and, therefore, where direct evidence of the fact is wanting, the more the jury can see of the surrounding facts and circumstances, the more correct their judgment is likely to be. The competency of a collateral fact to be used as the basis of legitimate argument is not to be determined by the conclusiveness of the inferences it may afford in reference to the litigation fact. It is enough if these may tend, even in a slight degree, to elucidate the inquiry, or to assist, though remotely, to a determination probably founded in truth. *Stevenson v. Stewart*, 11 Pa. St. 307. The modern tendency, both of legislation and of the decision of courts, is to give as wide a scope as possible to the investigation of facts.”

Judge Cooley, in *Stewart v. People*, 23 Mich. 63, 75, held that the proper test for the admissibility of evidence ought to be whether it has a tendency to effect belief in the mind of a reasonably cautious person, who should receive and weigh it with judicial fairness. This accords with the Ohio rule that the spirit of the law of evidence permits a resort to every reasonable source of information upon a disputed

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question of fact arising in a case. *Bell v. Brewster*, 44 Ohio St. 690, 697. In the same case, at pp. 699, 700, Phillips on Evidence is quoted to the point that it may be laid down as a first principle that exclusion is generally an evil, and admission generally safe and wise, and that it is certain that the administration of justice in our courts has suffered, not from too free an admission of evidence, but from too rigid exclusion. Evidence of collateral matters is admissible which is capable of affording a reasonable presumption or inference as to the principal matter or fact in dispute. *Brewing Co. v. Bauer*, 50 Ohio St. 560, 565; *Thomson*, Ohio Trial Ev., Sec. 163, citing *Insurance Co. v. Tobin*, 32 Ohio St., 77, 91. The transaction under investigation is the sale of Coca-Cola, real or spurious, by the defendant. The purpose of the plaintiff is to show that the purchases of the genuine article by other retail dealers under conditions and circumstances substantially the same as those surrounding the defendant, were so greatly in excess of those made by the defendant as to warrant the inference that to supply the demand at his places of business he dispensed a substituted article. If the evidence is competent, it is not necessary that it should be shown that the conditions and circumstances were precisely the same. Similarity or equivalency in that respect is sufficient. It will also be sufficient should the conditions and circumstances surrounding the defendant be more favorable to large sales than those which surround competitors whose sales or purchases, as the case may be, are brought into comparison with his. The conditions which produced given results to the defendant's competitors, it is contended, should under similar or equivalent conditions have produced the same results for the defendant. In the case of *Bry Block Mercantile Co. v. Columbia Portrait Co.*, 219 Fed. Rep. 710, C. C. A. 6, it was averred that the plaintiff fraudulently represented to the defendant that three other dealers in other and distant cities (Birmingham, Ala., New

Orleans, La., and San Antonio, Texas) had used the advertising scheme in question and had found that the profits on frames sold for the medallions given away would repay all cost of its operation. There was no averment that the conditions existing in any of such cities were similar to those surrounding the defendant in Memphis. Nothing was alleged as to the amount of effort expended or ability displayed by the respective merchants, or any of them, in such distant cities to make the scheme successful, or which the defendant would have to exhibit in Memphis to obtain the same results. The trial court sustained a demurrer to the answer. The Circuit Court of Appeals in approving such action said:

“While the question is not free from doubt, we think it beyond the safe limits of the established rule to allow a rescission for fraud to be predicated upon such representations made in the surroundings shown without dispute by this record.”

It did not however, rule that a demurrer should be sustained or evidence excluded regardless of the facts that might be pleaded. In that case the defendant, after he ceased to purchase of the plaintiff, bought medallions from another manufacturer. He offered to prove that the medallions so purchased were the precise equivalent of those made by plaintiff and that he operated his store and advertising scheme with such substituted medallions exactly as contemplated by his contract with the plaintiff. It was held error to reject such highly persuasive evidence, the court saying that the equivalency of the article and of the conditions is of the utmost importance as showing the value of the comparison and that without proving such equivalency the evidence would be of little force. In the instant case the plaintiff seeks to prove that the defendant sold a given amount of a well known and popular article, staple in its nature and sold everywhere in the same form, which was precisely the same as that sold by others in the

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same city and in the same localities in such city, and would have the court infer that, on account of claimed similarity of conditions and circumstances, the discrepancy in the amount of the genuine article sold by the defendant, as compared with that sold by his competitors, is such that the defendant could not have supplied his trade therewith and consequently must have resorted to a substitute. The teachings of the Bry Block Mercantile Company case, and the authorities above cited touching evidence of collateral matters, do not, in view of the facts disclosed, render inadmissible the evidence under consideration, offered by the plaintiff, it was properly received and has considerable probative value.

The volume of business done at any given stand and the success or failure of its owner are determined not merely by the desirability or undesirability of the location, but also by the personality, effort and ability of the individual conducting the business. If the personal equation be considered, the defendant does not suffer by comparison with others. He has been engaged in the drug business for thirty years. His first experience was at Ashland, Ohio. He then went to Brooklyn, New York, where he remained about thirteen years. He says the store he conducted there "was considered one of the largest in the city." In October, 1900, he purchased the Herbst Drug Store at No. 13 South High Street, fronting on Capital Square and some three or four doors north of his present principal place of business. The location selected was good. Following the erection of the Harrison building, he manifested his good judgment by removing from the inner store room at No. 13 South High to the corner and better room at No. 23 South High Street, where he has since maintained his principal store. This room also fronts the State House and is the first room north of the Neil House (a well known hostelry), from which it is separated by an alley. It has not only the usual front but a side window westward along the alley. The opportunity

for a window display of goods is much better than in his former store. The location is most desirable. He has extended his business until he was operating at the time of the trial six drug stores — a fact which suggests enterprise, effort, and executive ability. The records show that he has a considerable number of employes. His selection of localities has been happy and displays good judgment. His store at the southeast corner of High and Main Streets is the corner room in the Great Southern Hotel Building. Car lines passing it in front run north and south; another line running east and west turns into High Street at the intersection of these two streets. The store at the corner of Miller and Main, and that near the corner of Mt. Vernon Avenue and Twentieth street (being either the second or third door from Twentieth street), are on important streets reaching into the east end of the city and are respectively in communities which have developed into business sections. The store at the corner of Poplar Avenue and North High Street is north of the depot on a north and south car line and a square north of Goodale Street, on which are car lines running both east and west. The location is not, however, so good as that of Foeller, which is in the same square and the second door from the northwest corner of Goodale and High Streets. Transfers from one car to another are frequent at the intersection of those streets. North High Street is devoted to business for a considerable distance both north and south of the above-mentioned stores. The defendant's business has been such that his average purchases from the drug house of The Kauffman-Lattimer Company, in 1913, were \$3,500 per month; in 1914 his average monthly purchases from that house were \$7,000 and his aggregate monthly purchases for the same period from \$10,000 to \$12,000, reaching \$14,000 in December. This bespeaks a growing business. He is not an amateur, but an experienced aggressive business man, who has established

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a chain of stores in growing communities of a growing city.

An affidavit of Massey was filed touching the amount of Coca-Cola purchased by other druggists in Columbus. In response to that a verified affidavit of the defendant was submitted, in which he states: "In answer to said statements affiant says that the amount of Coca-Cola purchased by him in each of the years that he has been engaged in the drug business in the city of Columbus has been such quantities as would ordinarily be used by soda fountains where said Coca-Cola was not especially advertised or brought to the attention of customers of such fountain." He was not then unwilling to enter upon a comparison of his stores with others.

The defendant's principal store at No. 23 South High Street has been continuously in operation at that place since 1904. His Mt. Vernon Avenue store was opened in November, 1912, but he states that the soda fountain was not placed or fully placed in operation until the spring of 1913. The Main and High Street store began business July 12, 1913; that on Main Street and Miller Avenue October 7, of the same year. These are the stores for which purchases were made in 1913, for the respective periods for which they were in operation. In the first week of April, 1914, the store at the corner of Poplar Avenue and High Street was opened. None of his stores have ever been discontinued.

The defendant states that he did not advertise or push the sale of Coca-Cola and that he believed it to be a habit-forming drink. That he did not maintain Coca-Cola signs on his premises, although he displayed advertisements of other goods sold by him, is borne out by the record. There is no evidence that he or his helpers or salesmen suggested to customers the purchase of Coca-Cola. He says he instructed his clerks not to sell it, without some restraint, to children. It may be conceded that he did not sell as much of the article as if he had advertised or pressed

its sale. It is urged that his defense of a belief that Coca-Cola is "habit-forming" is an after-thought, as it was not put forth until his third affidavit was filed. His failure sooner to interpose such defense may have been an oversight, but it suggests that his fear of the beverage's injurious effects was not deeply imbedded in his mind, or regarded as an important factor, or a deterrent from reaping the profits accruing from its sale. He sold Coca-Cola. There was confessedly a demand for it at every store he had, and it was known that it could be procured at any of them. Its sale was never discontinued on account of the defendant's belief of its harmful effects. No clerk has testified to any direction received from the defendant which would restrict its sale, or to any warning to be given to any purchaser, real or prospective, young or old, or to any suggestion made at any time that a purchaser buy some other drink. His belief as to its being a habit-forming substance does not appear ever to have been communicated to the public and none of his employes have alluded to it as such. There is no evidence that the request of any purchaser for Coca-Cola was ever refused, unless it be in the case of the Pinkerton detectives, and as to whether sales to them in bulk were refused need not be determined, because the case may be decided without so doing. The display of Coca-Cola signs is not universal with the dispensers of that article. It is not shown that all of the Columbus retailers with whose purchases plaintiff seeks to compare those of the defendant, exhibit signs in their places of business. Five of his competitors named in the record displayed signs. The record is silent as to the others. It would seem to have been to the interest of the defendant to have shown that such others also advertised the beverage had he been able to do so. The article is extensively advertised, wholly independent of the efforts of any individual retailer. Its use in Columbus is large. It is not seriously controverted, if controverted at all, that it is the best known and most

THE COCA-COLA COMPANY

frequently demanded of all the soft drinks sold in the city. Allusion has already been made to the quantity sold, and see affidavits of May, Hische, Foeller and Ebright. The same necessity for personally advertising it to effect sales does not exist so for less known articles. The defendant must have had quite a soda fountain trade at his central store, for one of his clerks, Swift, says a "lot of root beer" was sold there, and there is much evidence of the preparation and sale when prepared, of other soft drinks at the counter by girl attendants and other employes.

The evidence of the defendant's employes unexplained would leave the impression that purchases of Coca-Cola in kegs was frequent and consequently in large quantities. Dates, however, were not fixed. It must be different witnesses testified in some instances to the same purchases. The defendant admits that all his buying was from The Kauffman-Lattimer Company except fifteen gallons from the Buckeye Drug Company, from twenty to twenty-five gallons, as estimated by him, of the Morehouse-Martens Company, and a certain amount bought for his Lakeside store and shipped from that place to him here. There is evidence of some transfers of Coca-Cola from the central store to one of his others. There is a necessary inference that like transfers were made to others. I have made no calculation as to amounts. The amount must have been considerable, if regard be had to the small deliveries by the wholesale house to his outlying stores and the large deliveries by such house to other drug stores in the same localities. Counsel are not agreed as to the extent of Coca-Cola purchased. For the year 1913 plaintiff fixes it at 70 gallons, the defendant at 90 gallons. For the year 1914 plaintiff makes it 150 gallons, the defendant 180 gallons. Which is correct is not highly important, certainly not conclusive. The ultimate result must be the same, whichever set of figures is adopted.

The Perfecto Cigar Store's place of business is in the same block and but three or four doors north of

the defendant's store at No. 23 South High Street. It is an inside room, less attractive and affording less opportunity for display than the defendant's. It is hardly to be presumed that women and children on account of its extensive cigar features, would resort to it as much as to the more attractive drug store. That store purchased 100 gallons of Coca-Cola in 1913, in the same time that the defendant purchased 90 gallons (if his figures be correct) for all of his stores then in operation—his central store having an established business and being in operation all the time, and his other three respective stores being open a part of the year, as heretofore stated. In 1914 the purchases of the Perfecto Cigar Store were 146½ gallons and of the defendant for his five stores 150 to 180 gallons, according to the system of calculation adopted. We have seen that the defendant's store at No. 23 South High Street is north of and distant from the Neil House an alley's width. The Wendt-Bristol Company's store also fronts Capital Square and is at No. 47 South High Street in the south part of the Neil House block and occupies an inside room. For display purposes and as to location it is at a disadvantage when compared with the defendant as regards his main store. Conceding that the Wendt-Bristol Company displays Coca-Cola signs, the stores are so closely situated and the general conditions, having regard to all the circumstances, are so similar that the consumption of Coca-Cola in one ought not to vary greatly from that of the other. Nevertheless, as against the quantity bought by the defendant for all of his stores in the respective years of 1913 and 1914, the Wendt-Bristol Company purchased for its single store 168 gallons in 1913 and 241 gallons in 1914. Such difference cannot be rationally explained on any or all of the defensive theories the defendant has advanced. The Perfecto Cigar Store and the Wendt-Bristol Company have been selected on account of their close proximity to the defendant's main store and the similarity of surroundings — the advantages

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as to the surroundings being favorable to the defendant. Additional significance attaches to the above figures if notice be taken of the purchases made by the stores on Mt. Vernon Avenue and Main Street (those of Eitel and Fobes) in the vicinity of those owned by the defendant in the same locality as the respective stores. Eitel's store is on the corner of two streets and more central as regards the local business community than defendant's Mt. Vernon Avenue store, and, other things being equal, ought, I think to have larger sales. Defendant's store at Main Street and Miller Avenue is in an attractive corner room. That of Fobes is on the opposite side of the street and two doors east in an inner room. It is not so desirable as a corner room or so attractive as plaintiff's, but is on the side of the street which has the greater number of business houses. About one and a quarter squares north of the Neil House is the Busy Bee Candy Kitchen; two squares north is Hatton Bros.; three and a half squares north is the May Drug Company, in the Hotel Chittenden block. The Hatton Bros. do some advertising, but in comparing their store with the defendant's single store it should be borne in mind that it is more nearly in the center of retail business and is apparently conceded to have the best retail drug business in the city. It is difficult to believe that the defendant in 1914 should have had a demand for but 150 to 180 gallons of Coca-Cola for his five stores, one of which was across the alley from the Neil House, and another in the most desirable room in the Great Southern Hotel Building, when in the same period the one store of the May Drug Company in the Chittenden Hotel block required 336 gallons for its trade, the Foeller store 160 gallons, the Eitel store 121½ gallons and the Fobes store 100 gallons. There are 165 retailers of Coca-Cola in Columbus. The average number of unbottled gallons of Coca-Cola purchased per store in 1914 was 42.4. On that basis, the defendant's stores should have consumed 212 gallons. It is not claimed that

he purchased or used more than 180 gallons. The significance of the comparison lies in the fact that the average of 42.4 gallons per store results from the inclusion in the aggregate number of stores of not only these in desirable locations, but also all of the smaller stores undesirably situated and in outlying districts. Suffice it appears to indicate that the quantity of genuine Coca-Cola consumed at the defendant's counters in 1914 was abnormally low. The inference reasonably follows that his sales of what was dispensed as Coca-Cola exceeded his sales of the genuine article.

There is significance in the fact that defendant purchased from the wholesaler only in five and ten gallon kegs, excepting in case of the supply bought for his Lakeside summer store. Why should he have bought by the barrel for that one store, which was open for a short period only each year, and not bought in like manner for his several Columbus stores, which were operated throughout the entire year? Cave says (p. 434) that the supply for the Main and Miller store came from No. 23 South High Street. From the facts disclosed, there must have been transfers to other of the defendant's stores from the same place; and yet the supply at his main store was limited to one keg, excepting, according to Morrison (p. 502) when the shipment from Lakeside came in. Morrison (p. 501) did practically all the buying for the main store, excepting what was done by the defendant himself. Myron Kauffman says (p. 472) that the Coca-Cola that came to No. 23 South High Street, when he worked there, came one keg at a time. The demand on a single keg must have been large. The operation of five or six drug stores, for such finally became the number, is quite an enterprise. Was it managed in a hand to mouth manner by an aggressive business man? His experience with that purchased for the Lakeside store shows that Coca-Cola properly may be preserved for a long time in a condition fit for use. The price per gallon for a five-

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gallon keg was \$1.75; for a ten-gallon keg, \$1.65; for a barrel, \$1.50. The price on his small purchases was from 10% to 16 $\frac{2}{3}$ % higher than what it would have been by the barrel. He says he obtained a discount on his small purchases. He does not say it would not have been given on large ones. Large purchases generally secure better terms than small ones. Why was Coca-Cola bought by the keg and Red Rock Syrup on different occasions by the barrel? It is true he says he used such syrup in preparing four different beverages, but the chemist, Wesener, directly (pp. 860, 861) and Caspari indirectly (p. 805) refute a use of it so extensive.

Defendant says that Harrington asked him for a sample (pp. 626, 627). Later he testified that he voluntarily gave Harrington a sample without his requesting it. It was drawn from the container at the fountain. Harrington states that he not only asked for a sample, but also asked that it be from the barrel in the cellar, and was told that it was taken from it, which barrel, according to the defendant, contained Red Rock Syrup. The conclusion, it would seem, must be that Harrington made the request which he states. Defendant did not deny that he said the sample furnished by him came from the barrel which, he says, was not opened until two weeks later. It is not favorable to the defendant that Harrington was permitted to depart in the mistaken belief that the sample given him for analysis was from a given source, when it in fact was from another.

Other matters discussed have been considered, but to review them would, without changing the result, prolong an opinion much lengthier than originally contemplated. The plaintiff has sustained the burden of proof which the law imposes to establish unfair competition. Let a decree be taken in its favor.

Candler, Thomson & Hirsch, Atlanta, Georgia.

Booth, Keating, Peters & Pomerene, Columbus, Ohio, for complainant.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

THE COCA-COLA COM-
PANY,

Complainant,

v.

FRANK F. MYKRANTZ,

Defendant.

No. 34.

FINDING, JUDGMENT
AND DECREE.

This day this cause came on to be heard and was submitted to the court on the pleadings, exhibits, testimony and arguments of counsel; on consideration whereof the court finds the issues in this case in favor of the complainant, The Coca-Cola Company, and against the defendant, Frank F. Mykrantz, and that the complainant is entitled to the relief prayed for in its Bill of Complaint. It is therefore *ordered, adjudged and decreed* by the court that the defendant, Frank F. Mykrantz, his servants, agents and employes, and each of them, be, and they are hereby *perpetually restrained and enjoined* from doing all or any of the following acts:

1. From in any manner infringing upon the trade rights of the complainant, The Coca-Cola Company, by selling or delivering, in response to requests or orders for Coca-Cola, any beverage other than that made from the Coca-Cola syrup manufactured by the complainant, The Coca-Cola Company, and from substituting therefor any other syrup whatsoever.

2. From using any name, applied to any drink, so similar to the name "Coca-Cola" as to cause deceit or deception.

3. From marketing, selling or offering for sale as Coca-Cola a syrup, whether diluted or not, of the identical color of the product known as Coca-Cola, manufactured and sold by the complainant, The

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Coca-Cola Company, and from marketing, selling or offering for sale, as Coca-Cola, any product having the peculiar and distinctive color, appearance and taste of said product of the complainant, or having such approximation thereto, in color, appearance and taste, or otherwise, as may tend to deceive the public, and from marketing, selling or offering for sale any substitute for said genuine product of the complainant.

The Court further finds that the complainant, The Coca-Cola Company, by reason of the wrongful acts complained of in the Bill of Complaint filed herein, has been damaged in the sum of Five Dollars (\$5.00). It is therefore *considered, ordered and adjudged* by the court that the complainant, The Coca-Cola Company, recover of the defendant, Frank F. Mykrantz, the said sum of Five Dollars as damages and compensation, together with its costs herein expended taxed at \$——.

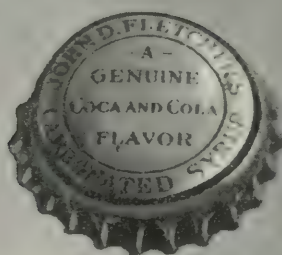
THE UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF OHIO, } ss.
EASTERN DIVISION. }

I, B. E. DILLEY, Clerk of the District Court of the United States within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and correct copy of the original Finding, Judgment and Decree, entered June 24, 1915, as the same appears on file and of record in the office of the Clerk of said Court, in the therein entitled cause.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court, in the City of Columbus, Ohio, this 22nd day of August, A. D. 1922.

(Sd) B. E. DILLEY, Clerk.

(By) C. P. WHITE, JR., Deputy.



IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE SOUTHERN
DISTRICT OF OHIO

WESTERN DIVISION

249 FEDERAL 763

MARCH 19, 1918

THE COCA-COLA COMPANY,
v.
BENJAMIN DUBERSTEIN, *et al.*

MATTHEWS & MATTHEWS, Dayton, Ohio,
HAROLD HIRSCH, Atlanta, Ga.,
FRANK F. REED and EDWARD S. ROGERS, Chicago, Ill.,
For Complainant.

DALE & KUSWORM, Dayton, Ohio,
For Defendant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF OHIO,
WESTERN DIVISION

249 FED. 763

MARCH 19, 1918

THE COCA-COLA COMPANY,
v.
BENJAMIN DUBERSTEIN, *et al.*

1. TRADE-MARKS AND TRADE-NAMES—UNFAIR COMPETITION—WHAT CONSTITUTES.

Where complainant had a registered trade-mark in the word "Coca-Cola," and had built up a large trade in that popular soft drink, defendant's sale of a competing soft drink under the name of "Coca and Cola," although his product, unlike that of complainant, contained no trace of the coca shrub or cola nuts, must be deemed "unfair competition," and an infringement of complainant's trade-mark, as defendant imitated the size and shape of the bottles in which complainant sold its product, and the word "and" between the words "Coca" and "Cola" was in such small type that purchasers might well deem they were obtaining complainant's product.

2. TRADE-MARKS AND TRADE-NAMES—UNFAIR COMPETITION—INFRINGEMENT OF TRADE-MARK.

Where, during the pendency of a suit by complainant, which had valid trade-mark in the word "Coca-Cola," and had built up a large business in the sale of that drink, to enjoin defendants from selling an imitative drink under the label "Coca and Cola," defendant's charge of the label of his drink to "El-Cola" was a mere evasion, and sale thereunder was an infringement of complainant's trade-mark, which under the circumstances amounted to a contempt of court.

3. TRADE-MARKS AND TRADE-NAMES — INFRINGEMENT—LABELS—DEFENSE.

Where, after complainant sued for infringement of its trade-mark, defendant with a paper label covered the infringing name blown in the bottles in which it sold its soft drink, that fact furnishes no protection, as the paper labels were likely to become detached, the bottles being in contact with ice and water while waiting for use.

In Equity. Bill by The Coca-Cola Company against Benjamin Duberstein, doing business as the Dayton Mineral Water Company, and others. *Decree for complainant, granting an injunction and an accounting, and defendant Duberstein found guilty of contempt.*

Matthews & Matthews, of Dayton, Ohio, *Harold Hirsch*, of Atlanta, Ga., and *Frank F. Reed* and *Edward S. Rogers*, both of Chicago, Ill., for complainant.

Dale & Kusworm, of Dayton, Ohio, for defendant Duberstein.

HOLLISTER, District Judge:

(1) Beginning in 1886, complainant's predecessors had built up a large business in a syrup in which there was an infusion of an extract of coca shrub and of cola nuts; the latter made after, it is said, the cocaine is extracted from them.

The syrup is the basis of a non-intoxicating beverage made by combining it with carbonated water. Since 1892, the complainant has been the exclusive owner and proprietor of the business. The product was named "Coca-Cola" at the beginning, and the beverage has been known under that name for more than thirty years. By the expenditure of millions of dollars in advertising it has become well known throughout the land. The name means, and is understood by the public to mean, complainant's product. The name was registered in 1893 in the Patent Office, and again in 1895, in pursuance of the act of

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Congress of that year, was registered. The bottles in which it is sold are of uniform size and appearance, with the name "Coca-Cola" blown in them, and the caps of the bottles bear the trade-mark.

The defendant Duberstein, a bottler of soft drinks at Dayton, Ohio, under the name of Dayton Mineral Water Company, bottles a product purchased by him from one John D. Fletcher, who called his product "John D. Fletcher's Carbonated Syrup, a Genuine Coca and Cola Flavor." He was the president of the Nashville Syrup Company, enjoined from making and selling "Fletcher's Coca-Cola." 215 Fed. 527, 132 C. C. A. 39 (C. C. A. 6). The bottles in which Duberstein sells the product to the other defendants, saloon keepers, etc., at Dayton and vicinity, are approximately of the same size as Coca-Cola bottles, and in them is blown the words "Coca and Cola." The "and" is in small type, and the "Coca" "Cola" in script, imitating the script of the genuine Coca-Cola trade-mark. The defendant Coshocton Glass Company is the maker of bottles for Duberstein.

The validity of complainant's trade-mark as the exclusive property of complainant, has been established in a number of cases elsewhere and in this circuit. *Coca-Cola Co. v. Nashville Syrup Co.* (D. C.) 200 Fed. 153; 215 Fed. 527, 132 C. C. A. 39 (C. C. A. 6). Defendant's product is colored to an exact imitation of the color of complainant's by the use of caramel, which serves no other purpose. The cap on defendant's bottles contains the name "Coca and Cola" in red, with other descriptions indicating that the contents is a flavor of coca and cola. There is no trace of the coca shrub or cola nuts or coca leaves in it. The testimony shows conclusively that it was intended to deceive the consuming public, and in many proved instances did deceive; but, aside from this, the appearance, coloring, size, caps, the delivery slips, the name "Coca and Cola" blown in the bottle, make the product on its face a fraud on the complainant and on the public. The complainant is entitled to an

injunction against all the defendants in accordance with its prayer, and for an accounting.

(2, 3) During the progress of the case, Duberstein sold his product as "El-Cola" in the same bottles in which he had been selling "Coca and Cola" covering the words "Coca and Cola," blown thereon, by a diamond-shaped label pasted thereover, on which was printed in large type in white on a diamond-shaped black background, "El-Cola." By pasting on the label, Duberstein would change his "Coca and Cola" product to "El-Cola," and thereby escape the condemnation he evidently expected "Coca and Cola" would receive in this case. Thereby he is charged by complainant with contempt of court.

This is illustrative of a strange lack of perception on the part of defendant Duberstein, and by so many, as the decisions show, in cases of infringement of trade-mark and unfair competition, that the courts deal with matters of substance rather than of form, and that the odor of fraud is difficult to remove. This case reeks with it. Why does the defendant use the "Cola" at all? And why color its product as it does? Any why adopt the same size of bottles? The only purpose is to appropriate a part of the value of complainant's trade-mark and good will.

Pasting the label "El-Cola," affords no protection to defendant's illegal act. These bottles are in contact with ice and water all the time while waiting for use. Aside from the instances proved of the labels having become detached, their liability to become detached is so great as not to afford protection, even if their permanency would be a protection. *Prest-O-Lite Co. v. Davis*. (D. C.) 209 Fed. 917, affirmed 215 Fed. 349, 131 C. C. A. 491 (C. C. A. 6); *Prest-O-Lite Co. v. Bogen* (D. C.) 209 Fed. 917; *Prest-O-Lite Co. v. Avery Lighting Co.* (C. C.) 161 Fed. 648; *Evans v. Von Laer* (C. C.) 32 Fed. 153; *Wood v. Burgess* (1890) 59 Law Jour. N. S. 11; *Thwaites & Co. v. McEvilly*, 20 Rep. Pat. Cas. 663, affirmed 21 Rep. Pat. Cas. 397, 401, 402.

THE COCA-COLA COMPANY

It is also proved that defendant's "El-Cola" is palmed off by dealers as "Coca-Cola." But the label, if permanent, affords no protection. "El-Cola" is in itself an infringement of complainant's trade-mark "Coca-Cola." Complainant has cited more than 25 applicable decisions.

In addition to the injunction, plaintiff may take an order finding Duberstein guilty of contempt, the punishment to be determined when the formal order is taken.

THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION

No. 13—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

BENJ. DUBERSTEIN, doing business as DAYTON
MINERAL WATER COMPANY, *et al.*, Defendants.

DECREE.

Complainant's motion for a preliminary injunction coming on to be heard upon the verified Bill of Complaint, affidavits and exhibits, and having been argued by counsel;

It is ordered, that during the pendency of this suit and the further order of the Court the defendants, to wit: Benj. Duberstein, doing business as Dayton Mineral Water Company, Martin Hornung, George Soto, Peter Kolleda, Roy Snyder, E. B. Faust, doing business as Faust Grocery Store, Joseph F. Waltz, C. J. Stumpf and C. A. Stumpf, doing business as Stumpf Brothers, A. L. Hart and W. F. Hart, doing business as A. L. Hart & Son and their officers, agents, servants, employees, attorneys, licensees and assigns and all holding by, through or under them, and each of them, be, and they hereby are enjoined and restrained from using in connection with the manufacture, advertisement, offering for sale or sale of any product not being the genuine product of the complainant, the name "Coca-Cola," or any like name,

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“Coca and Cola” or any like words or names and further from doing any act or thing or using any name, device, artifice or contrivance which may be calculated or likely to induce the belief that an article not the complainant’s is the complainant’s.

That the defendants during the pendency of this suit and until the further order of the Court, be and they hereby are, *enjoined and restrained* from selling as Coca-Cola or in response to demands for Coca-Cola any product not complainant’s.

That certified copies of this order be served upon the defendants herein named forthwith.

Dated, June 11th, 1917.

HOLLISTER, District Judge.

To the above rulings, orders and decrees the defendant Benjamin Duberstein, excepts.

O. K. as to form.

Dale & Kusworm, for defendant Benj. Duberstein.

Approved.

Matthews & Matthews, solicitors for complainant.

THE UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF OHIO, } ss.
WESTERN DIVISION.

I, B. E. Dilley, Clerk of the District Court of the United States within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and correct copy of the original Order for Injunction, as the same appears on file and of record in the office of the Clerk of said Court, in the therein entitled cause.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court, in the City of Dayton, Ohio, this 24th day of August, A. D. 1922.

B. E. DILLEY, Clerk.

By (Sd) STEPHEN T. MALONEY, Deputy.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION

THE COCA-COLA COMPANY,
Complainant,

v.

BENJAMIN DUBERSTEIN,
doing business as DAYTON
MINERAL WATER COM-
PANY, *et al.*,
Defendants.

FINAL DECREE.
No. 13—DAYTON.

This cause having come on to be heard upon the report of J. Q. A. Johnson, Esq., as Special Master, to whom it was referred to take and report an account for damages and profits in accordance with the decree herein, which report is dated 3rd day of March, 1919, and also upon the exceptions taken to said report on the part of the defendant and on the motion of the plaintiff for the confirmation of said report and said cause having been argued by counsel for the respective parties, and due deliberation had thereon. The Court finds that the exceptions of the defendant to said report are not well taken, and does overrule all of said exceptions except paragraph six, and said report with respect to the amount of profits realized by the defendant from the sale of the substitute for Coca-Cola is found to be \$319.18, instead of \$387.70.

It is therefore, *ordered, adjudged and decreed* that said defendant pay to said plaintiff the sum of \$682.80, which is the amount found by the Special Master as stated in his report referred to, to be due from the defendant to the plaintiff as modified herein by the Court.

It is *ordered, adjudged and decreed* that said defendant pay to said plaintiff his costs in said suit to

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be taxed and that the clerk tax in said costs the sum of \$250.00 as a reasonable fee of the Special Master for his services in this cause and that said plaintiff have execution for such costs and for the sums above decreed to be paid to said plaintiff, to which ruling, order and decree the defendant, Benjamin Duberstein, by his counsel, excepts.

Candler, Thomson & Hirsch, Matthews & Matthews,
atty's. for The Coca-Cola Co.

Kusworm & Shamon, atty's. for Defendant Benj.
Duberstein.

THE UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF OHIO, } ss.
WESTERN DIVISION. }

I, B. E. Dilley, Clerk of the District Court of the United States within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and correct copy of the original Final Decree, as the same appears on file and of record in the office of the Clerk of said Court, in the therein entitled cause.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court, in the City of Dayton, Ohio, this 24th day of August, A. D. 1922.

(Seal)

B. E. DILLEY, Clerk.

By STEPHEN T. MALONEY, Deputy.

Coca-Cola
TRADE MARK
REGISTERED

TAKOLA

IN THE UNITED STATES
DISTRICT COURT FOR
THE EASTERN DISTRICT
OF VIRGINIA

No. 39—IN EQUITY

THE COCA-COLA COMPANY,
v.
OLD DOMINION BEVERAGE CORPORATION.

CANDLER, THOMSON & HIRSCH,
EDWARD S. ROGERS,
C. V. MEREDITH,
For Complainant.

ROBERT E. SCOTT, Richmond, Virginia,
For Defendant.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF VIRGINIA

No. 39—IN EQUITY

COCA-COLA COMPANY

v.

OLD DOMINION BEVERAGE CORPORATION.

DECREE

This cause coming on for trial upon the supplemental bill, answer thereto, and evidence and exhibits produced by the parties, and having been argued by counsel and considered by the court, it is *Ordered, Adjudged and Decreed*, as follows:

1. It having been held by the Circuit Court of Appeals in the Coca-Cola Company v. Old Dominion Beverage Corporation, No. 1729, that the defendant, by use of the phrase Taka-Kola, violated plaintiff's trade-mark rights in the phrase Coca-Cola and the decree of this court entered July 12, 1921, upon the mandate of the Circuit Court of Appeals, *enjoins* the defendant, among other things, from the use of "plaintiff's trade-mark Coca-Cola or any like word or the colorable imitation thereof, Taka-Kola, or any like word."

2. The defendant, since said decree, has changed the name Taka-Kola to Takola, and is now using the word Takola upon the same product to which it previously applied the word Taka-Kola.

3. The change in name from Taka-Kola to Takola is not a compliance with the decree of this court en-

v. OLD DOMINION BEVERAGE CORPORATION

tered on the mandate of the Circuit Court of Appeals.

4. Takola is a like word to Taka-Kola and, in view of the decision of the Circuit Court of Appeals, is an infringement of plaintiff's trade-mark Coca-Cola.

5. The word Takola is a violation of the rights of the plaintiff and an infringement of its said trade-mark.

6. It is therefore further *Ordered, Adjudged* and *Decreed* (without prejudice to the decree heretofore entered in this cause) and in addition to the injunction therein decreed, that the said defendant, Old Dominion Beverage Corporation, its officers, agents, servants, employes, attorneys, licensees, transferees and assigns, and each and all thereof, and all acting by or under its authority, be and they are each and all *perpetually enjoined and restrained* from using or employing, or authorizing the use or employment, in connection with the manufacture, advertisement, offering for sale or sale of any beverage or ingredient thereof, the word Takola or any like word, and that a *writ of perpetual injunction* issue accordingly.

7. That defendant account to the plaintiff for any and all profits derived by said defendant from defendant's said infringement of plaintiff's trade-mark, and in addition to the profits to be thus accounted for by the defendant, that the defendant pay to the plaintiff the damage plaintiff has sustained by reason of defendant's said infringement; and this cause is hereby referred to Robert H. Talley, Esq., Master in Chancery of this Court, to take and state an accounting to the plaintiff for any and all such profits and any and all such damages, with full power to the master to subpoena and order the attendance of witnesses, to take depositions and require the production of books, papers and documents pertinent to the taking and stating of said accounting, and to report to this court such accounting and statement of profits and damages, with the right to the plaintiff to move the court to enter judgment upon such accounting for any sum above the amount found as the actual

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damages, not exceeding three times the amount thereof.

8. That all labels, signs, prints, packages, wrappers, or receptacles in the possession of the defendant bearing the word Takola, be forthwith delivered up for destruction; provided, however, that the bottles of the defendant with the name blown therein may be used in the sale of drinks not resembling that of the plaintiff, where the name Takola is removed or hidden, and the name of the contents of said bottles plainly shown thereon.

9. Nothing in this decree shall in any manner or to any extent restrict or lessen the relief granted the plaintiff by said decree of July 12, 1921.

10. That defendant pay the costs of this suit to be taxed and that upon taxation plaintiff have execution therefor.

11. Defendant having intimated a purpose to appeal from this order and decree may upon filing said petition for appeal and bond in the sum of \$5000.00 have a *supersedeas*.

GRONER, Judge.

July 26, 1922.

A true copy—*Teste*:

JAMES D. BRADY, Deputy Clerk.





IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE SOUTHERN
DISTRICT OF ILLINOIS
SOUTHERN DIVISION

276 FEDERAL 1010

No. 47—JANUARY TERM, 1920

THE COCA-COLA COMPANY, Complainant,

v.

LOUIS L. EMMERSON, Secretary of State, JOHN
D. FLETCHER and THE NATIONAL CAR-
BONATING SYRUP COMPANY, Defendants.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
FRANK F. REED, EDWARD S. ROGERS, Chicago, Ill.,
Solicitors and of Counsel for Plaintiff.

EDWIN C. HENNING,
For Defendants.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF ILLINOIS,
SOUTHERN DIVISION

276 FEDERAL 1010

No. 47—JANUARY TERM, 1920

THE COCA-COLA COMPANY, Complainant,

v.

LOUIS L. EMMERSON, *et al.*

1. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—18—"COCA-COLA" VALID TRADE-MARK.

Coca-Cola Company held to have a valid trade-mark in the name "Coca-Cola" as applied to the beverage widely known by that name.

2. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—79—EQUITY HAS JURISDICTION TO GRANT APPROPRIATE RELIEF AGAINST INFRINGEMENT.

Equity has jurisdiction to grant appropriate relief against infringement of a valid trade-mark and to that end may compel the Secretary of State of a state to cancel the registration under a state statute of an infringing trade-mark which constitutes a cloud on the title of the true owner of the trade-mark.

3. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—70 (3)—"COCA-COLA" HELD INFRINGED.

Labels for a beverage, registered under a state trade-mark statute containing the words "a genuine Coca and Cola flavor" printed in four horizontal lines, "Coca and Cola" constituting one line with the words "Coca" and "Cola" in large colored letters and the word "and" in small type so that it would readily be mistaken for complainant's trade-mark "Coca-Cola," held an infringement of such trade-mark.

4. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—45—REGISTRATION UNDER STATE STATUTE CONFERS NO EXCLUSIVE RIGHTS.**

The trade-mark statute of Illinois (Hurd's Rev. St. 1919, c. 140) does not purport to confer any exclusive rights, and the registration of trade-marks thereunder has no effect in giving them the quality of trade-marks if not already such.

5. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—42—STATE STATUTES ARE IN AFFIRMANCE OF COMMON-LAW RIGHTS.**

State statutes providing for registration of trade-marks are in affirmance of the common law, and remedies given by such statutes are either declaratory or are cumulative and additional to those recognized and applied by the common law.

6. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—45½—NEW VOL. 7A KEY-NO. SERIES—OWNER ENTITLED TO CANCELLATION OF FRAUDULENT REGISTRATION OF INFRINGING TRADE-MARKS.**

Where defendant by false and fraudulent representation procured the registration with the Secretary of State of Illinois under the state statute, knowing that they were infringements on complainant's trade-mark, complainant held entitled to join the Secretary of State with defendant in a suit in equity for the purpose of establishing its rights and procuring the cancellation of such registrations.

7. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION—41—TRADE-MARK RIGHTS NOT LIMITED BY STATE STATUTE.**

A valid trade-mark, long used in interstate commerce, cannot be limited by denying it effect in a state because not registered under a state statute permitting such registration.

In Equity. Suit by the Coca-Cola Company of Delaware against Lewis G. Stevenson and others.
Decree for complainant.

The Coca-Cola Company of Georgia, substituted pending the action by the Coca-Cola Company of Delaware, sued to enjoin the defendants, John D. Fletcher, a citizen of the state of Texas, and the National Carbonating Syrup Company, a Delaware company, doing business at the city of Evansville,

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Ind., from further infringing upon the trade-mark of the plaintiff; also, seeking an order directing the Secretary of State of the State of Illinois, Lewis G. Stevenson, and his successor Louis L. Emmerson, to cancel the registration of the purported trade-marks of defendants Fletcher and the National Carbonating Syrup Company, on the ground that the registration was falsely and fraudulently procured.

The plaintiff and its predecessors had been engaged in the manufacture of a syrup for an aerated beverage and had caused the beverage itself to be bottled under the direction and supervision by the plaintiff known as "Coca-Cola," since 1886. A vast sum of money had been expended in advertising the trade-mark "Coca-Cola" as indicating plaintiff's syrup and the aerated beverage bottled therefrom. In the year 1916, \$1,943,178.40 had been expended in bringing the syrup and beverage manufactured and sold under the trade-mark "Coca-Cola" to the attention of the trade in interstate commerce. The production of the syrup increased from 25 gallons in 1886 very rapidly until the annual output had, in 1916, reached 9,715,892 gallons; the trade-mark "Coca-Cola" had become favorably known everywhere; and the rights of the plaintiff were repeatedly affirmed by adjudications in the United States courts. The trade-mark was the subject matter of two registrations in the United States Patent Office and prior thereto and since had been used by the plaintiff in interstate commerce.

On March 16, 1916, plaintiff made application to the Secretary of State of Illinois for the registration of its trade-mark "Coca-Cola" under the provisions of the Revised Statutes of Illinois (Chapter 140), fully complying with all the terms and provisions of that statute. The application, however, was rejected by the Secretary of State because of prior registrations by defendant John D. Fletcher, as follows:

"John D. Fletcher's Coca and Cola Carbonating Syrup, Chicago, Illinois," the same being inclosed in

a red circular band and registered July 24, 1914. Also, the words:

“John D. Fletcher’s Carbonated Syrup, A Genuine Coca and Cola flavor” the same being inclosed in a broad corrugated wheel or circular band of blue and registered October 6, 1914. Also,

“Tri-Pure. A genuine Coca and Cola Flavor, 7 Fl. Oz. Purest Drink in the World”—inclosed in a broad corrugated wheel or circular band and registered March 10, 1916. Also,

“Tri-Pure. A Genuine Coca and Cola Flavor, 7 Fl. Oz. Purest Drink in the World”—inclosed in a red corrugated wheel or circular band and registered September 25, 1916; all of said registrations being in the office of the Secretary of State of Illinois.

And the registrations of John D. Fletcher were permitted to remain on record in the office of the Secretary of State, thereby becoming clouds upon the title and the exclusive right of the plaintiff to the enjoyment of its trade-mark in Illinois.

Defendant Fletcher was formerly a resident of Nashville, Tenn., and on or about February 15, 1911, organized a corporation under the laws of Tennessee, under the name of Nashville Syrup Company. He was president, general manager, and one of the principal stockholders of the company. Prior to the registrations in Illinois, a bill of complaint was filed in the Circuit Court of the United States for the Middle District of Tennessee by the plaintiff against the Nashville Syrup Company, praying an injunction against the defendant for infringing plaintiff’s trade-mark “Coca-Cola.” Upon a hearing the pleadings in the case, on July 29, 1912, a final decree was entered perpetually enjoining the Nashville Syrup Company, its agents, servants or employes, from further infringing plaintiff’s trade-mark. An appeal was prosecuted from the decree to the Circuit Court of Appeals for the Sixth Circuit, and on June 13, 1914, the decree of the Circuit Court was affirmed. *Coca-Cola Co. v. Nashville Syrup Co.* (D. C.) 200 Fed. 157;

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Nashville Syrup Co. v. Coca-Cola Co., 215 Fed. 527, 132 C. C. A. 39. Ann. Cas., 1915B, 358.

Fletcher knew of the suit and the adjudication in the United States Circuit Court in Tennessee and aided in the defense interposed to the bill. At the time he filed his several applications for registration of trade-marks in Illinois, defendant Fletcher knew that the trade-mark "Coca-Cola" belonged to the plaintiff and referred to and meant to the trade plaintiff's syrup and the non-alcoholic beverages made therefrom under plaintiff's supervision, and that the use of the alleged trade-marks by Fletcher was unlawful and his acts and representations in procuring the registrations of his alleged trade-marks in Illinois, embodying the trade-mark "Coca-Cola" in various forms, was a fraud upon plaintiff's rights.

The National Carbonating Syrup Company's rights to the trade-marks registered in Illinois were acquired through defendant Fletcher.

The applications of Fletcher for the registration of the trade-marks in question with the Secretary of State of Illinois were in due form of law. The statute authorizing the registration of trade-marks, labels, etc., required the applicant to make a showing under oath that he had the right to the use of the trade-marks, the registration of which he sought, and that no other person, firm, organization, union, or corporation had the right to such use either in the identical form, or in any such near resemblance thereto as might be calculated to deceive. In making this representation required by the statute, defendant Fletcher disregarded plaintiff's rights to the trade-mark "Coca-Cola." The registrations procured were procured by reason of the representations made, and upon a hearing the Court found that the representations were untrue and fraudulent, and that they are a cloud upon the title to plaintiff's property.

It was contended upon the part of defendants Fletcher and National Carbonating Syrup Company, that the plaintiff was without remedy in equity on the

ground of unclean hands, for the reason that at one time, many years ago, it had been convicted of marketing a syrup that contained slight traces of ingredients offensive to the pure food laws, and citing, after submission, the opinion of the Circuit Court of Appeals for the Ninth Circuit in *Koke Co. of America v. Coca-Cola Co.*, 255 Fed. 894, 167 C. C. A. 214; that plaintiff had no trade-mark rights in the name "Coca-Cola" for either syrup or beverage; that the mark was appropriated by plaintiff for a beverage and never was applied; that it could have no common law trade-mark because the name arose and was used to describe the ingredients in plaintiff's product, i. e., extracts of coca leaves and cola nuts, and being descriptive, even if registered by plaintiff under the Act of February 20, 1905, it would only remove it on the class of merchandise to which it had been appropriated by the declaration and actually used; the declaration appropriated the mark to the class known as beverages and as it was never used on beverages, the descriptive disability has never been removed; that whatever rights the plaintiff may have had in the trade-mark had become a nullity; that plaintiff's trade-mark never attained a secondary meaning as the name of plaintiff's product; that defendants have always acted in good faith; that their product is distinctively and truly flavored with coca and cola; which are common products of the soil; that defendants' product is Trico, and their trade-mark distinctive; that the state or any other sovereignty has the right to say how, when, and under what terms a mark may be used within the limits of that sovereignty; that plaintiff's product is not a beverage.

Defendant Secretary of State attacked the multifariousness of the bill.

Allen, Humphreys & Converse, of Springfield, Ill., and *Frank F. Reed* and *Edward S. Rogers*, both of Chicago, Ill., for plaintiff.

Graham & Graham, of Springfield, Ill., and *Edward*

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C. Henning, of Evansville, Ind., for defendants Fletcher and National Carbonating Syrup Co.

Andrew J. Brundage, Atty. Gen. of Illinois, and *Clarence M. Boord*, Asst. Atty. Gen. for defendant Secretary of State.

FITZHENRY, District Judge (after stating the facts as above):

The very recent decision of the Supreme Court in *Coca-Cola Co. v. Koke Co. of America, et al.*, 254 U. S. 143, 41 S. Ct. 113, 65 L. Ed., has conclusively disposed of the defense of "unclean hands" interposed by the defendants in this case, upon the authority of *Koke Co. of America v. Coca-Cola Co.*, 255 Fed. 894, 167 C. C. A. 214 (C. C. A. 9th Cir.). While the exact question in that case is not presented here, yet the same principle is involved. It is claimed that none of the chemical elements suggested by the name "Coca-Cola" were in fact to be found in plaintiff's syrup, and therefore it was a fraud upon the public. The language of the Supreme Court in disposing of that case is especially apt here:

"The name (Coca-Cola) now characterizes a beverage to be had at almost any soda fountain. It means a single thing coming from a single source, and well known to the community. It hardly would be too much to say that the drink characterizes the name as much as the name the drink. In other words 'Coca-Cola' probably means to most persons the plaintiff's familiar product to be had everywhere rather than a compound of particular substances. Although the fact did not appear in *United States v. Coca-Cola Co.*, 241 U. S. 265, we see no reasons to doubt that, as we have said, it has acquired a secondary meaning in which perhaps the product is more emphasized than the producer, but to which the producer is entitled."

This very recent decision of the United States Supreme Court settled many of the questions involved in this case. The opinion of the Circuit Court of

Appeals of the Ninth Circuit which was reversed was submitted to this court for its consideration upon the issues raised here, by the personal and corporate defendants, upon the theory that the identical plaintiff in this case had been adjudicated in the Circuit Court of Appeals to be of such unclean hands that it should be denied all relief in equity. The opinion disposes of the question of ownership of the trade-mark and recognizes that it has acquired a secondary meaning in which perhaps the product is more emphasized than the producer, but to which the producer is entitled.

It is well established that equity has jurisdiction to: (1) Cancel fraudulent instruments affecting titles; (2) to quiet title; (3) to remove a cloud on title; and (4) to enjoin clouding a title. If at the time of Fletcher's adoption and use of the trade-marks which he registered in Illinois the plaintiff had title to and was as far as possible, with this kind of property, in possession of the trade-mark "Coca-Cola" then any user or claim by another to that mark or a simulation thereof was such a wrong and trespass upon plaintiff's trade field, as to bring the question within the purview of equitable relief. 1 Storey's Equity, 700; Coel v. Glos, 232 Ill. 142, 83 N. E. 529, 15 L. R. A. (N. S.) 413; Hemstreet v. Burcick, 90 Ill. 444; Glos v. Goodrich, 175 Ill. 20, 51 N. E. 643; Langlois v. Stewart, 156 Ill. 609, 41 N. E. 177; Bradley v. Bell, 142 Ala. 382, 38 South 759; Grove v. Jennings, 46 Kan. 366, 26 Pac. 738; Hamilton v. Batlin, 8 Minn. 403 (Gil. 359) 83 Am. Dec. 787.

In a case of this character, where it is clear that the legal remedy in the premises, *mandamus*, is utterly inadequate to protect plaintiff's rights, equity has full jurisdiction over the Secretary of State to decree the plaintiff the relief to which it is entitled and to compel the Secretary of State to carry out the court's mandates by canceling any wrongful registrations of the defendants which constitute a cloud upon plaintiff's title and to permit the registrations of

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plaintiff's trade-mark. *Greene v. L. & I. R. Co.*, 244 U. S. 499, 37 Sup. Ct. 673, 61 L. Ed. 1280, Ann. Cas. 1917E, 88; *L. & N. R. Co. v. Bosworth* (D. C.) 230 Fed. 191; *Ill. Central R. Co. v. Bosworth* (D. C.) 209 Fed. 465; same *v. Greene*, 244 U. S. 555, 37 Sup. Ct. 697, 61 L. Ed. 1309; *St. Louis & S. F. R. Co. v. Cross* (C. C.) 171 Fed. 480; *Harrison v. St. L. & S. F. Ry. Co.*, 232 U. S. 318, 34 Sup. Ct. 333, 58 L. Ed. 621, L. R. A. 1915F, 1187; *Phil. Co. v. Stimson*, 223 U. S. 605, 32 Sup. Ct. 340, 56 L. Ed. 570; *Lane v. Watts*, 234 U. S. 525, 34 Sup. Ct. 965, 58 L. Ed. 1440.

In the trade-marks registered by defendant Fletcher and attached to his answer, Exhibit A contains the words "John D. Fletcher's Coca and Cola Carbonating Syrup, Chicago, Illinois." B contains the words "John D. Fletcher's Carbonating Syrup, A Genuine Coca and Cola Flavor." C contains the words "Tri-pure Purest Drink in the World, A Genuine Coca and Cola Flavor. 7 Fl. Oz." D contains the words "Trico Purest Drink in the World, Genuine Coca and Cola Flavor. 6½ Fl. Oz." In exhibit A the words "Coca" and "Cola" are in type about twice the size of the largest type in the label. The letters are outline type, printed in two colors, blue and red. In Exhibits B and C the words "A Genuine Coca and Cola Flavor" form four horizontal lines the words "Coca and Cola" being the longest line in the center of the trade-mark, while the center of Exhibit D is arranged almost exactly the same as C, with the exception of the word "a," so that in all four of the registrations the catchy display line which would naturally be the first to attract the eye is "Coca and Cola." In Exhibit A the word "and" in the display line "Coca and Cola" is printed in type probably one-fourth as large as the type used in "Coca" and "Cola," so that the word "and" might readily be mistaken for the dash in plaintiff's trade-mark "Coca-Cola." All of the labels now claimed by defendant Fletcher as his trade-marks, and which were registered by him, display a manifest purpose on the part of

the designer to attract the eye of and interest the public in two words "Coca" and "Cola."

In the light of these facts, it is quite natural that the Secretary of State should have held, when the plaintiff endeavored to register its trade-mark, that it was so similar to those already registered as to require him to deny registration. There could be no better or more convincing evidence of the infringement than the official action of the Secretary of State upon plaintiff's application. The addition of the word "genuine" and the adding of the word "flavor" and the substitution of the word "and" for the dash in plaintiff's trade-mark do not relieve defendant Fletcher from his culpability as an infringer, but rather by the arrangement of the labels, the registration of which he procured, makes the conclusion the more irresistible that he clearly intended to appropriate to his own use the benefits of plaintiff's trade-mark in Illinois. Added words and their embellishment do not destroy rights in a trade-mark. *Coca-Cola Co. v. Nashville Syrup Co.* (D. C.) 200 Fed. 153-155, 200 Fed. 157-160, affirmed 215 Fed. 327, 132 C. C. A. 39; *Coca-Cola Co. v. Am. Druggists' Syndicate* (D. C.) 200 Fed. 107; *Fuller v. Huff*, 104 Fed. 141, 43 C. C. A. 453, 51 L. R. A. 332; *De Long v. De Long Hook & Eye Co.*, 10 Misc. Rep. 577, 32 N. Y. Supp. 203; *Clark Thread Co. v. Admitage*, 74 Fed. 936, 21 C. C. A. 178; *Beecham v. Jacobs*, 221 U. S. 263, 31 Sup. Ct. 555, 55 L. Ed. 729; *Menendez v. Holt*, 128 U. S. 514, 9 Sup. Ct. 143, 32 L. Ed. 526.

Virtuous intentions cannot be attributed to defendant Fletcher in his infringement upon the plaintiff's rights. He personally procured the registrations; he is the president of the corporation defendant, National Carbonating Syrup Company, and he was the president, general manager, and one of the largest stockholders of the Nashville Syrup Company, which was enjoined from infringing upon the plaintiff's trade-mark by the decree of the United States Circuit Court for the Middle District of Tennessee (*Coca-Cola Co.*

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v. Nashville Syrup Co. [D. C.] 200 Fed. 153, 215 Fed. 327, 132 C. C. A. 39), and was one of the persons who come within the rule that an officer, director, or stockholder of a corporation is bound and estopped by judgment against the corporation, when he has full knowledge and participates in the defense (Hancock Nat'l. Bank v. Farnum, 176 U. S. 640, 20 Sup. Ct. 506, 44 L. Ed. 619; Singer v. Hutchinson, 183 Ill. 606, 56 N. E. 388, 75 Am. St. Rep. 133; United States v. United States Shoe Machinery Co. [D. C.] 234 Fed. 127). So we conclude that in designing the trade-marks, the registration of which Fletcher procured, his purpose to use plaintiff's trade-mark was not only clear and deliberate, but with full knowledge of plaintiff's rights. The character of defense interposed strengthens this view, for it is contended, practically, that inasmuch as the trade-mark "Coca-Cola" was not registered, anybody could register it and that the first person to do so would be the legal owner thereof and entitled to its use. This, of course, is a mistaken view of the Illinois statute. Registration does not and cannot create or bestow the exclusive right to use a trade-mark, nor does the statute so provide.

There is nothing in the Illinois statute requiring registration preliminary to a suit, or the making of the certificate anything more than evidence of adoption, nor does it provide that registration shall confer any exclusive right, nor is any means provided for the settling of contested priority claims in the office of the Secretary of State between two applicants. Where a similar statute of New York was under consideration, the Court of Appeals said:

"It may be observed, however, that the Legislature by this Statute has not attempted to confer trade-mark rights, but merely to more effectively regulate existing common-law trade-marks and to afford an additional speedy remedy for the violation thereof, and to prevent fraud and imposition on the public, which are matters within the

police power of the State.” *Prest-O-Lite Co. v. Ray*, 162 App. Div. 62, 147 N. Y. Supp. 138.

Only the owner of a trade-mark has the right to register it. Defendant Fletcher must now be held to have known that the plaintiff here and its predecessors owned the trade-mark “Coca-Cola” by adoption and use since 1886, and this ownership and the rights of the plaintiff to it have been adjudicated so frequently in the federal and state courts that it has become a matter of such common knowledge as to make the citation of authorities entirely unnecessary.

In the light of this situation, it is not difficult for the court to conclude as to which of the contending parties judicial protection should be granted. *Carroll & Son v. McIlvaine & Baldwin* (C. C.) 171 Fed. 125.

Where it was contended that registration created rights, the Supreme Court of the United States said:

“This exclusive right was not created by the act of Congress, and does not now depend upon it for its enforcement. The whole system of trade-mark property and the civil remedies for its protection existed long anterior to that act, and have remained in full force since its passage.”

Trade-Mark Cases, 100 U. S. 82, 25 L. Ed. 550.

Registration cannot confer a title to a trade-mark, if some other individual has acquired a prior right by adoption and use; nor can it vest a title in the registrant as against another’s common-law title. *Carroll & Son v. McIlvaine & Baldwin* (C. C.) 171 Fed. 125.

The general rule adopted by the courts on this subject is that the state statutes providing for registration of trade-marks are in affirmance of the common-law; that the remedies given by such statutes are either declaratory or are cumulative and additional to those recognized and applied by the common law. *Trade-Mark Cases*, 100 U. S. 82, 25 L. Ed. 550. The registering of defendant Fletcher’s trade-marks with the Secretary of State has no effect in giving them

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the quality of trade-marks if not already such. *Oakes v. St. Louis Candy Co.*, 146 Mo. 391, 48 S. W. 467.

Business good will and trade-marks indicative thereof are property rights and considered and treated as such. *Hanover Star Milling Co. v. Metcalf*, 240 U. S. 403, 36 Sup. Ct. 357, 60 L. Ed. 713. The plaintiff here and its predecessors had used the trade-mark "Coca-Cola" in interstate commerce since 1886 and had used it in connection with its business in intrastate commerce in Illinois for a great many years before the recording of defendant Fletcher's trade-marks with the Secretary of State. The good will of the public and the trade-mark indicative thereof in Illinois were plaintiff's property at the time of the filing of the trade-marks by Fletcher and were entitled to the protection which the law gives.

Section 3 of the Trade-Marks Act of Illinois provides:

"Every such person, association or union that has heretofore adopted or used, or shall hereafter adopt or use, a * * * trade-mark * * * as provided in section 1 of this act shall file the same for record in the office of the Secretary of State, by leaving two copies * * * with said Secretary, and by filing therewith a sworn statement specifying the name or names of the person * * * on whose behalf such * * * trade-mark * * * shall be filed, the class of merchandise and particular description of the goods to which it has been or is intended to be appropriated; that the party so filing, or on whose behalf such * * * trade-mark * * * shall be filed, has the right to the use of the same, and that no other person, firm, association, union or corporation has the right to such use either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimile copies or counterparts filed therewith are true and correct." Ill. R. S. c. 140, Sec. 3, 6 J. & A. Ann. Stat. 6335.

Defendant Fletcher undoubtedly made the proof required by this statute, and in doing so he knew, by reason of the prior adjudication of plaintiff's trade-mark in Coca-Cola Co. v. Nashville Syrup Co. (D. C.) 200 Fed. 157, as well as his experience and knowledge of plaintiff's business and trade-mark, evidenced by the manifest purpose of the design of the trade-marks, the registration of which he procured, the showing which he made to the Secretary of State in compliance with the statute was false and fraudulent.

There can be no question as to the right of the plaintiff even though a foreign corporation to enter a forum in the state of Illinois for the purpose of protecting its property rights (Peck Bros. & Co. v. Peck Bros. Co., 113 Fed. 291, 51 C. C. A. 251, 62 L. R. A. 81); nor that the Secretary of State is a proper party to plaintiff's bill; and that mandamus would be an inadequate remedy. (People v. Rose, 219 Ill. 46, 76 N. E. 42; People v. Van Cleave, 183 Ill. 330, 55 N. E. 698, 47 L. R. A. 795; Bender v. Bender, 178 Ill. App. 203; International Committee of Y. M. C. A. v. Y. W. C. A., 194 Ill. 194, 62 N. E. 551, 56 L. R. A. 888.) The Attorney General of Illinois on behalf of the Secretary of State presses the point of multifariousness. The bill comes clearly within Equity Rule 26 (198 Fed. xxv, 115 C. C. A. xxv).

The record shows that the Secretary of State was misled into recording Fletcher's trade-marks by reason of the false showing made in connection with the application. In other words, the joint effect of Fletcher's misconduct which resulted in the Secretary's official action based thereon constitute a cloud upon the title of plaintiff's property which equity will remove. Rule 26 (198 Fed. xxv, 115 C. C. A. xxv) does not drive the plaintiff into a circuitry of actions, first, to resort to equity to establish its property rights over defendant Fletcher's claims and then to bring a separate action against the Secretary of State to cancel the illegal and unlawful registrations which constitute a cloud upon plaintiff's title and to procure

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the registration of plaintiff's trade-mark. Equity will avoid a multiplicity of suits.

The claim that "Genuine Coca and Cola Flavor" is truthfully descriptive of the flavor of defendant's product is disposed of by *Coca-Cola Co. v. Koke Co. of America*, 254 U. S. 143, 41 Sup. Ct. 113, 65 L. Ed.; *Davids Co. v. Davids*, 233 U. S. 461, 34 Sup. Ct. 658, 58 L. Ed. 1046; *Coca-Cola Co. v. Nashville Syrup Co.* (D. C.) 200 Fed. 157. And this would be true even in the absence of the stipulation in this case that "Coca-Cola" has a secondary or distinctive meaning.

To adopt the contention of the defendants as to territorial limitations would be to recognize an unlawful burden upon or interference with or obstacle to interstate commerce, in contravention of the long line of authorities upon that subject which hold that such a burden is unlawful, regardless of whether it is an attempt by reason of a regulatory statute, a license tax, or the enforcement of a trade-mark registration act. The case upon which defendants rely (*Hanover Star Milling Co. v. Metcalf*, 240 U. S. 103, 36 Sup. Ct. 357, 60 L. Ed. 713) is inapplicable to sustain their position as no registration of a trade-mark was under discussion in that case by the Supreme Court. That decision disposed of the rights of the parties as to common-law trade-marks.

Defendants make the point that because the plaintiff does not bottle the beverages made from its syrups, but permits others to do so under supervisory bottling contracts, takes this case out of the rule with reference to adoption and user, for the reason, it is charged, that plaintiff's trade-mark is only used upon the syrup. The courts have held that the sufficiency of plaintiff's supervisory contracts over its bottlers justifies the employment of plaintiff's trade-mark "Coca-Cola" on the bottled product. *Coca-Cola Co. v. Deacon Brown Bottling Co.* (D. C.) 200 Fed. 105; *Coca-Cola Co. v. J. G. Butler* (D. C.) 229 Fed. 224. In the latter case equity enjoined a bottler from using the syrup and beverage made therefrom without super-

vision, against the plaintiff's wishes. The court held the same in *Coca-Cola Co. v. Bennett*, 238 Fed. 513, 151 C. C. A. 449.

The personal and corporate defendants earnestly contended that their trade-mark is "Trico" and not a "Genuine Coca and Cola Flavor," but simply the word "Trico" which described its syrup and the beverage made from it. This court can see no objection to a full enjoyment of the benefit of any trade-mark by the defendant if properly limited, but in equity and in good conscience it should not be permitted to use a combination of words which will mislead the public into believing that it is getting a beverage which contains the "Coca-Cola" flavor. To permit defendants to do so would be to permit them to apply to their own use, the benefit of the stupendous sums of money which have been appropriated and expended for advertising plaintiff's goods throughout the length and breadth of the country; to cause confusion, and in a way, to permit the public to deceive itself, to the detriment of the plaintiff, who, undoubtedly, owns the trade-mark and all rights concerning it, as well as the good will of the business and who is entitled to the full enjoyment of it. As the Supreme Court so recently said:

"It hardly would be too much to say that the drink characterizes the name as much as the name the drink."

The name, it must be conceded, is owned by the plaintiff.

A decree will be entered in line with these views and the facts heretofore found.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF ILLINOIS,
SOUTHERN DIVISION

Monday May 16, 1921, Court met pursuant to adjournment. Present, The Honorable
LOUIS FITZHENRY, Judge.

No. 47—IN EQUITY

THE COCA-COLA COMPANY, a Delaware Corporation, Plaintiff,

v.

LOUIS L. EMMERSON, Secretary of State, JOHN D. FLETCHER and THE NATIONAL CARBONATING SYRUP COMPANY, a Corporation, Defendants.

DECREE.

This cause coming on for final hearing upon pleadings and proofs, and being argued by counsel, and the court having found the facts by the findings of fact filed in said cause, and upon motion of the plaintiff for a decree, it is *Ordered, Adjudged and Decreed* as follows:

(1) That the defendants, John D. Fletcher and The National Carbonating Syrup Company, do forthwith execute and deliver to defendant Louis L. Emmerson, Secretary of State of the State of Illinois, proper

cancellation of the alleged registrations of trademarks and labels, four in number, made in the Office of the Secretary of State of the State of Illinois by defendant, John D. Fletcher, and now claimed by defendant, The National Carbonating Company, and specified and set forth in the pleadings, evidence and findings of the court, and in this decree, and that said defendant, Louis L. Emmerson, Secretary of State, do forthwith in due and proper form annul and cancel and enter cancellations and annulments of said registrations, and each thereof.

Said registrations are as follows:

A. "John D. Fletcher's Coca and Cola Carbonating Syrup, Chicago, Illinois," enclosed in a red circle and registered in the office of the then Secretary of State of the State of Illinois by said John D. Fletcher on or about July 24, 1914, and a like registration filed by said Fletcher, October 9, 1914, and also shown as Exhibit "A" to the answers of John D. Fletcher and The National Carbonating Syrup Company filed herein on or about May 28, 1917.

B. "John D. Fletcher's Carbonating Syrup. A Genuine Coca and Cola Flavor" same being enclosed in a broad corrugated wheel or band of blue and registered by said John D. Fletcher on or about October 6, 1914, in the office of the then Secretary of the State of Illinois, and shown as Exhibit "B" to the answers of said John D. Fletcher and The National Carbonating Syrup Company, filed herein on or about the 28th day of May, 1917.

C. "Tri-Pure. A Genuine Coca and Cola Flavor, 7 Fl. Oz. Purest Drink in the World" enclosed in a red corrugated wheel or circular band and registered in the office of the then Secretary of State of the State of Illinois on or about March 10, 1916, by said John D. Fletcher and shown as Exhibit "C" to the answers of said John D. Fletcher and The National Carbonating

THE COCA-COLA COMPANY

Syrup Company filed herein on or about May 28, 1917.

D. "Trico. Genuine Coca and Cola Flavor. 6½ Fl. Oz. Purest Drink in the World" enclosed in a red corrugated wheel or circular band and registered on or about September 25, 1916, in the office of the then Secretary of State of the State of Illinois by said John D. Fletcher and shown as Exhibit "D" to the answers of said John D. Fletcher and The National Carbonating Syrup Company, filed herein on or about May 28, 1917.

That the said defendant Louis L. Emmerson, Secretary of State of Illinois, do forthwith, upon retender to him of the application made by the original plaintiff herein on or about March 16, 1916, or of a new application in due form made by the present plaintiff, herein, in each case with proper fee for registration, allow registration and issue certificate of registration therefor of the words "Coca-Cola" and deliver the said certificate of registration to said present plaintiff.

(2) That said John D. Fletcher, his agents, servants, attorneys, associates and assigns, and the said defendant The National Carbonating Syrup Company, its officers, directors, agents, attorneys, servants and employees, successors and assigns, and each and every thereof, be and the same, and each thereof hereby are *perpetually enjoined and restrained* from registering and from using and employing upon or in connection with syrups, extracts or beverages made therefrom the words or phrases "Coca-Cola," "Coca and Cola," "Coca and Cola Carbonating Syrup" and "A Genuine Coca and Cola Flavor," or any thereof, or any like word or phrase, and from using as labels, crowns, capsules or trade-marks, or in advertising, the designs, marks or labels specified as A, B, C, and D, in Paragraph (1) hereof, or any form of label, crown or capsule, or any word or words, phrase or phrases calculated to deceive consumers or buyers of plaintiff's product, or to pass off the product of said defendants as and for the product of plaintiff, or to

induce the belief that the product of either of said defendants is the product of the plaintiff and that a *writ of injunction* issue accordingly.

(3) Plaintiff having in open court waived an assessment of damages and accounting of profits to this date and recovery thereof to date from and by said defendants, John D. Fletcher and The National Carbonating Syrup Company, and each thereof, *this decree is made final.*

(4) That the plaintiff do have and recover from said defendants, John D. Fletcher and The National Carbonating Syrup Company, the costs of this proceeding to be taxed, and have execution therefor.

LOUIS FITZHENRY, Judge.

May 16th, 1921.

Frank F. Reed, solicitor and of counsel for plaintiff.

Edwin C. Henning, attorney for all defendants, except Emmerson.

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE EASTERN
DISTRICT OF VIRGINIA

3 T. M. R. 126

IN EQUITY,

THE COCA-COLA COMPANY
v.
THE VIRGINIA SYRUP COMPANY

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
HARRY D. NIMS, New York City,
C. V. MEREDITH, Richmond, Virginia,
Solicitors and of Counsel for Complainant.



IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF VIRGINIA

IN EQUITY

THE COCA-COLA COMPANY
v.
THE VIRGINIA SYRUP COMPANY

WADDILL, District Judge.

This cause is now before the court for final hearing upon the pleadings and proofs, and upon the application for the injunction prayed for, and the conclusion reached by the court thereon is that the complainant has a valid statutory trade-mark in the word or words, "Coca-Cola," and that the defendant, in the manufacture and vending of its compound known as "Crescent Coca-Cola" is infringing the complainant's trade-mark, and hence, the injunction prayed for should be *granted*.

Reference may be had to the recent decision of Judge SANFORD, in the case of Coca-Cola Co. v. Nashville Syrup Co., 200 Fed. 157, and the authorities referred to therein, as containing a full and interesting discussion of the subject under consideration.

A true copy: Attest:
JOSEPH P. BRADY, Clerk.

Filed March 5, 1913.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF VIRGINIA

THE COCA-COLA COMPANY, Complainant,

v.

VIRGINIA SYRUP COMPANY, Defendant.

This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consideration thereof and it appearing that the complainant does not desire to take any probf before the Special Commissioner, E. M. Long, as to the damages which it has sustained by reason of the sale or sales made by the defendant or his agent and employees as alleged in complainant's bill, it is *Ordered, Adjudged* and *Decreed* that the complainant recover of the defendant all its costs in this suit had and expended, and nothing further remaining to be done herein, it is further *Ordered* that this suit be stricken from the docket and placed among the ended causes.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge.

Richmond, Virginia, October 6, 1914.

A true copy. *Teste:*

.....
Deputy Clerk.

The Coca-Cola logo is rendered in its iconic red script font. The letters are fluid and connected, with a small, less legible trademark symbol located just below the 'Coca' portion of the wordmark.

Coca-Cola

A. D. S. Ext. of
Coca and Kola

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE SOUTHERN
DISTRICT OF NEW YORK

200 FEDERAL 107

OCTOBER 7, 1912

THE COCA-COLA COMPANY,
v.
AMERICAN DRUGGISTS' SYNDICATE, *et al.*

HARRY D. NIMS, New York City,
CANDLER, THOMSON & HIRSCH, Atlanta,
COLBY & GOLDBECK, New York City,
For Complainant.

S. STANWOOD MENKEN,
For Defendants.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF NEW YORK

200 FEDERAL 107

OCTOBER 7, 1912

THE COCA-COLA COMPANY,
v.
AMERICAN DRUGGISTS' SYNDICATE, *et al.*

TRADE-MARKS AND TRADE-NAMES (Sec. 95) — IN-
FRINGEMENT—INJUNCTION.

Complainant's trade-mark "Coca-Cola" applied to a soft drink sold at soda fountains, was *prima facie* infringed by defendant's sale of a similar preparation under the term "Extract of Coca and Kola" so as to entitle complainant to a preliminary injunction.

(ED. NOTE.—For other cases see Trade-marks and Trade-names—Cent. Dig. Sec. 108; Dec. Dig. Sec. 95.)

In Equity. Suit by The Coca-Cola Company against the American Druggists' Syndicate and others.
On motion for preliminary injunction. *Granted.*

Harry D. Nims, of New York City, *Candler, Thomson & Hirsch*, of Atlanta, Ga., and *Colby & Goldbeck*, of New York City, for complainant.

S. Stanwood Menken, for defendants.

LACOMBE, Circuit Judge:

In *Coca-Cola Co. v. Nashville Syrup Co.* (U. S. District Court, Middle District of Tennessee, July 8, 1912, 200 Fed. 157) it was held, in a carefully considered opinion, that complainant has a valid registered

v. AMERICAN DRUGGISTS' SYNDICATE, et al.

trade-mark in the term "Coca-Cola," applied to the well-known soft drink which it makes and vends. This conclusion I am inclined to accept as correct.

The only question left is whether, in undertaking to afford relief against the use by others of a similar term, the court should enjoin the defendants from selling the preparation which the defendant Syndicate makes under the term "Extract of Coca and Kola." It is no substantial departure from the term "Coca-Cola" to spell either or both words with a K, or to substitute for the hyphen the conjunction "and" or an ampersand, and it seems not to be a sufficient differentiation to call the compound an extract, or an elixir, or a decoction.

For obvious reasons, both sides insist that the cola constituent of their respective compounds has been thoroughly decocainized thus depriving it of its peculiarly characteristic element. There is not in the record any satisfactory evidence that a combination of decocainized coca with cola has ever been used, or is usable, in medicine or in the arts, or any otherwise than a soft drink. Under these circumstances it would seem that complainant is entitled to an injunction against the further use of the term "Extract of Coca and Kola," or any similar term as the name of defendant's soft drink. That the drink as sold is concentrated, so as to require dilution by the dispensing druggist and the addition of sweetening to make it a safe and palatable ingredient to be added at the soda fountain to aerated water, seems immaterial.

The operation of the injunction will be stayed for 60 days after entry of the order.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF NEW YORK

THE COCA-COLA COMPANY,
Complainant,

v.

AMERICAN DRUGGISTS' SYNDI-
CATE; REID, YEOMANS &
CUBIT; HENRY B. SMITH;
STEPHEN E. DORN; THE
CARTWRIGHT COMPANY;
JULIUS C. BELMONTE; BELA
KRAMER; MAX NEWMARK;
EDWARD LEGOLL; PETER
DIAMOND; ROBERT GOLD-
BERG; MORRIS L. SWEITZER;
ABRAHAM SETTEL; JOHN M.
KRAUSE and JOHN H. EBER-
HARDT, Co-Partners doing busi-
ness under the firm name and style
of KRAUSE & COMPANY.

E. 9-296.

Defendants.

This cause coming on to be heard on complainant's motion for a final decree, and complainant appearing by its solicitors *Candler, Thomson & Hirsch*, of Atlanta, Georgia, *Colby & Goldbeck* and *Harry D. Nims*, of New York City, and the defendant American Druggists' Syndicate appearing by its solicitors *Philbin, Beekman, Menken & Griscom*, of New York City, and the defendants, Reid, Yeomans & Cubit; Henry B. Smith; Stephen E. Dorn; The Cartwright Company; Julius C. Belmonte; Bela Kramer; Max Newmark; Edward Legoll; Peter Diamond; Robert Goldberg; Morris L. Sweitzer; Abraham Settel; John M. Krause and John H. Eberhardt, co-partners doing business under the firm name and style of Krause & Co. appearing

v. AMERICAN DRUGGISTS' SYNDICATE, *et al.*

by their solicitors *D. Raymond Cobb*, of Syracuse, New York, and it appearing to the Court that the issues involved herein have been settled and agreed upon by the parties hereto, the defendants agreeing to consent to the entry of a final decree in the form following, now, on motion of *Harry D. Nims*, of counsel for the complainant, it is

Ordered, Adjudged and Decreed, That a *perpetual injunction* be issued pursuant to the prayer of the Bill of Complaint herein, strictly commanding and enjoining the defendants American Druggists' Syndicate, Reid, Yeomans & Cubit, Henry B. Smith, Stephen E. Dorn, The Cartwright Company, Julius C. Belmonte, Bela Kramer, Max Newmark, Edward Legoll, Peter Diamond, Robert Goldberg, Morris L. Sweitzer, Abraham Settel, and John M. Krause and John H. Eberhardt, co-partners doing business under the firm name and style of Krause & Co., their agents, servants, employees, associates, and each and every of them, that he, it and they desist and refrain from any further use, directly or indirectly of the term "Extract Coca & Kola," or any similar term as the name of the soft drink manufactured, advertised and sold by the defendant American Druggists' Syndicate, and which is referred to in the bill of complaint herein; and it is further

Ordered, Adjudged and Decreed, That the defendants be relieved from the payment of any and all damages whatsoever; and it is further

Ordered, Adjudged and Decreed, That no costs be payable to either of the parties hereto by the other.

GEO. C. HOLT, Judge,
United States District Court.

We consent to the entry of the foregoing decree :

Philbin, Beekman, Menken & Griscom,
Solicitors for American Druggists' Syndicate.

D. Raymond Cobb,
Solicitor for Reid, Yeomans & Cubit, *et al.*

THE COCA-COLA COMPANY

Harry D. Nims,

Solicitor for Complainant.

Endorsed: U. S. District Court, S. D. of N. Y., filed
May 21, 1913.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK. } ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate, namely, Final Decree filed May 21, 1913, in the case entitled The Coca-Cola Company against American Druggists' Syndicate, Equity 9-296 have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom¹ and of the whole of the said originals.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said court at the City of New York, in the Southern District of New York, this 22nd day of August in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of the Independence of the said United States the One Hundred and Forty-seventh.

(Seal)

ALEX. GILCHRIST, JR., Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN
DISTRICT OF GEORGIA

274 FEDERAL 481

JULY 22, 1921

THE COCA-COLA COMPANY,
v.
BROWN & ALLEN.

1. **COURTS KN. 328 (3)—VALUE OF GOOD WILL—ELEMENT OF VALUE INVOLVED FOR JURISDICTIONAL PURPOSES.**

In a suit to enjoin an alleged unfair trade practice affecting the value of complainant's good will, such value may be considered in determining the amount involved for jurisdictional purposes.

2. **TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KN. 68—UNFAIR TRADE PRACTICE MAY BE ENJOINED.**

Complainant, which makes and sells a well-known syrup for soda fountains, to be diluted with carbonated water and sold to the public as a drink, held entitled to an injunction to restrain defendants, who operate a soda fountain, from diluting complainant's syrup and adding other ingredients, before placing it in their fountain, and drawing and selling the mixture as complainant's drink.

In Equity. Suit by The Coca-Cola Company against Brown & Allen. On motion for preliminary injunction. *Granted.*

Candler, Thomson & Hirsch, of Atlanta, Georgia, for complainant.

THE COCA-COLA COMPANY

Brewster, Howell & Heyman, of Atlanta, Georgia,
for defendant.

SIBLEY, District Judge:

The Coca-Cola Company is the manufacturer of a syrup known as Coca-Cola, which it sells to soda founts to be diluted with carbonated water and sold as a drink to the public. To create a public demand it spends annually much money in advertising, and has a large and well-established patronage for its drink so sold. Brown & Allen, operating a soda fount, purchase Coca-Cola from The Coca-Cola Company and dispense it. An injunction *pendente lite* is now sought against an alleged unfair practice of Brown & Allen.

(1) 1. Jurisdiction is contested because an insufficient amount is said to be involved. It may be that the damages recoverable from Brown & Allen are less than \$3,000.00, or even that none are recoverable because incapable of estimation; but the wrong alleged affects the value of petitioner's good will in business, which may be greatly injured by a continuance of the practice attacked. The value of this good will, which greatly exceeds \$3,000.00, may be looked to in determining the amount involved, and the jurisdiction is thereby sustained. *Frontera Transp. Co. v. Abaunza* (C. C. A.) 271 Fed. 199.

(2) 2. The evidence authorizes a finding that, while filling glasses for Coca-Cola, the defendants at their fount, in the presence of the customer, draw into the glass an amount of syrup resembling in consistency and color petitioner's product, and then add the usual amount of carbonated water and such flavors as the customer may order. The syrup so drawn is Coca-Cola, to which water, sugar, and caramel have been added before putting it in the fount. The water, of course, increases the amount of syrup and weakens it. The sugar, however, serves to restore its consistency and the caramel its color; they being used for this purpose in making the original syrup. Analyses indicate that the adulteration

results in making about two gallons out of one. Thus, if the usual amount of syrup is drawn for a customer, his drink really contains but one-half the peculiar constituents of Coca-Cola, and is somewhat altered, perhaps, in taste.

It is contended that this is not only a fraud upon the public, but reflects itself also as one upon the petitioner, because the customer, in the language of the street, will conclude that "Coca-Cola is no good any more," and its popularity will be destroyed. On the other hand, it is said that the syrup was sold to be diluted, and the time and manner of its dilution is immaterial, and that by treating it as they do defendants please their customers and act within their rights.

No statute is involved. No contract restricting the manner of use or sale of the syrup is shown. No mark, of course, is upon the wares sold at the fount, and petitioner's trade-mark is, therefore, not involved. It is not an ordinary case of unfair competition, where one substitutes a spurious and imitative article and sells it as another's product. Indeed, it is said there can be no competition between a wholesaler and a retailer (*Regent Shoe Mfg. Co. v. Haaker*, 75 Neb. 426, 106 N. W. 595, 4 L. R. A. [N. S.] 477), and in point of fact the defendants are using and selling the petitioner's very product. But the genuine article has been altered by dilution and by disturbance of the proportions of its ingredients, and so sold. Counsel have found no authority respecting the right of a purchaser in bulk from the wholesaler to dilute or adulterate the article purchased and sell it as the product of the maker.

Without doubt the retailer here, because of the nature of the business and the way in which the syrup is ordinarily used therein, may dilute Coca-Cola syrup in offering it for sale. It is never drunk otherwise than diluted. He may also sweeten it by adding

THE COCA-COLA COMPANY

sugar, if that is desired by his customer, or he may similarly add anything else the customer desires. He may even develop a peculiar and popular mixture, which may make his Coca-Cola known and sought as such. But can he, with no claim made to the public of a distinctive mixture, and relying solely on the reputation of Coca-Cola as developed by its maker, deceptively dilute and cheapen it for the additional profit to be thus made? Such conduct is immediately a fraud on the purchasing public. It is also a fraud of which the maker may complain, because it tends to disrupt that connection between him and the purchasing public, built up at large expense and through a long time, which the law recognizes and protects as a good will, indirect and intangible though the connection be.

There seems to be nothing in the way of defendants selling weak Coca-Colas, or sweet ones, if they will; but it ought to be openly done. The syrup drawn in the customer's presence on his call for Coca-Cola ought to be the unadulterated article. That it is such is the fair intendment of the transaction. The customer understands the syrup drawn to be what he calls for. What is afterwards added by way of dilution or spiking he sees, and is not deceived by it. If defendants should put one-half quantity in the glass, instead of half strength, in serving Coca-Cola, it would be at once seen. The conclusion is inescapable that the dilution was made before the syrup was drawn, and concealed as to consistency and color by sugar and caramel, in order to deceive the purchaser as to its strength, and not in order to make weak or sweet Coca-Cola. Against the continuance of this practice petitioner is entitled to protection. If it is not done to deceive, defendants can have no objection to stopping it.

An *injunction pendente lite* will be ordered against drawing from the fount for mixture and sale as

Coca-Cola on calls therefor any other than the unaltered and unadulterated syrup made by petitioner and known as Coca-Cola.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN
DISTRICT OF GEORGIA,
NORTHERN DIVISION

IN EQUITY

THE COCA-COLA COMPANY,

v.

BROWN & ALLEN.

FINAL DECREE.

An injunction, during the pendency of the cause, and until a further order of this Court, having been granted on the 27th day of July, 1921, after a hearing upon the bill, answer and affidavits, and having been argued by counsel for the respective parties and submitted to the Court for consideration, and this Court having filed its opinion on the 22nd day of July, 1921, and, now, by consent of the parties hereto, the injunction heretofore granted is hereby *made permanent*, and it is therefore *Ordered, Adjudged and Decreed*, and the Court does hereby *Order, Adjudge and Decree* that the defendant, its servants, agents, clerks and attorneys, and all persons claiming or holding under or through it be and they are hereby *perpetually enjoined* from drawing from the fountain for mixture or sale as Coca-Cola on calls therefor any other product than the unaltered and unadulterated syrup made by petitioner and known as Coca-Cola.

It is further *Ordered*, That the costs be and they are hereby taxed against the defendant.

This the 17th day of December, 1921.

(Signed) SAMUEL H. SIBLEY,
United States Judge.

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF
DELAWARE

269 FEDERAL 796

No. 388—IN EQUITY

COCA-COLA BOTTLING COMPANY, Complainant,
v.
THE COCA-COLA COMPANY, Defendant.

No. 389—IN EQUITY

THE COCA-COLA BOTTLING COMPANY,
Complainant,
v.
THE COCA-COLA COMPANY, Defendant.

Opinion of HON. HUGH M. MORRIS,
U. S. District Judge.

THE COCA-COLA BOTTLING COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF DELAWARE

No. 389—IN EQUITY

THE COCA-COLA BOTTLING COMPANY,
Complainant,

v.

THE COCA-COLA COMPANY, Defendant.

The defendant, The Coca-Cola Company, a Delaware corporation, taking the position that a contract made between The Coca-Cola Company, a Georgia corporation, predecessor in title of the defendant, of the one part, and J. B. Whitehead and B. F. Thomas, through whom complainant claims, of the other part, was a contract at will with the right in either party to terminate the same upon reasonable notice, gave notice to the complainant that the contract would "stand terminated" on a specified subsequent day. Thereupon the complainant, denying the contract to be terminable at the will of either party without the consent of the other, filed its bill of complaint praying for an injunction, a decree for specific performance, and other and general relief. The case is now before the court upon defendant's motion to dismiss the bill, under equity rule 29, and also upon complainant's motion for a preliminary injunction as prayed by the bill. The defendant's motion will be first considered, and as it must be disposed of solely upon the allegations of the bill the substance of such allegations

v. THE COCA-COLA COMPANY

so far as deemed material to a proper consideration of this motion will be stated.

The Georgia corporation was organized in 1892 and became the sole owner of a secret process or formula under which it manufactured from the time of its organization until the year 1919 a syrup used in making a drink which it called Coca-Cola. It also adopted and used the words "Coca-Cola" as a common law trade-mark. By the year 1899 the Georgia corporation had become solely entitled to use the trade-name and trade-mark "Coca-Cola." Until the latter year the syrup manufactured by it had been used only as the base for a drink served at soda fountains for immediate consumption. During that year a contract was made between J. B. Whitehead and B. F. Thomas, of the first part, and the Georgia corporation, of the second part, which, as amended shortly after its execution, reads (with the exception of the numbers preceding each paragraph here added for convenience of reference) so far as material to the issues raised by the pending motions, as follows:

"Georgia,
"Fulton County.

"This agreement made and executed in duplicate this the twenty-first day of July, 1899, between J. B. Whitehead and B. F. Thomas, of the first part, and The Coca-Cola Company of the second part, Witnesseth:

"(1) That the parties of the first part are to establish in the City of Atlanta, as soon as the necessary machinery and buildings can be obtained, a Bottling Plant for the purpose of bottling a mixture of Coca-Cola syrup and preparation with Carbonic Acid and water.

"(2) This plant to be established by said parties of the first part without any expense or liability of any sort against said party of the second part.

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“(3) Said parties of the first part further agree to prepare and put up in bottles or other receptacles, a carbonated drink containing a mixture of the Coca-Cola syrup and water charged with carbonic acid gas under a pressure of more than one Atmosphere. Said Coca-Cola syrup and said water in said mixture to be used in proportions of not less than one ounce of syrup to eight ounces of water.

“(4) Said parties of the first part further agree to put up and keep and cause to be kept in sufficient quantity to supply the demand in all territory embraced in this agreement, a supply of this carbonated drink. It is expressly agreed that if, receiving notice in writing from the said party of the second part, to do so the parties of the first part shall, not within a period of ninety days from date of receiving said notice, place and keep upon sale at the point designated in said notice, a sufficient stock of such preparation or mixture to supply the demand therefor, then the rights herein granted within all the territory within a radius of one hundred miles of said point shall be forfeited, and Provided further that a failure on the part of the parties of the first part to keep and perform the conditions and provisions herein contained shall work a forfeiture of their rights hereunder.

“(5) Said parties further agree to buy all of the Coca-Cola syrup necessary to a compliance with this agreement at a price and upon terms set forth below, directly from the party of the second part.

“(6) The parties of the first part agree not to use any substitute or substitutes for or other syrup or substance, nor to attempt to use or imitate with any article made or prepared by them, Coca-Cola syrup.

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“(7) Parties of the first part further agree not to sell or in any way dispose of without the written consent of the parties of the second part in every instance any Coca-Cola except after it is carbonated and bottled.

“(8) In consideration of these agreements on the part of the parties of the first part the party of the second part agrees to sell Coca-Cola syrup to said parties of the first part at one (\$1.00) Dollar per gallon. * * *

“(13) Said party of the second part further agrees and hereby grants to said parties of the first part, the sole and exclusive right to use the name Coca-Cola and all the trade-marks and designs for labels now owned and controlled by said party of the second part, upon any bottles or other receptacles containing the mixture heretofore described, and the right to vend such preparation or mixture bottled or put up as aforesaid, in all the territory contained in the boundaries of the United States of America, except the six New England States and the States of Mississippi and Texas. This right to use the name Coca-Cola and the trade-mark and label furnished is to be applied only to the carbonated mixture described, and is not intended to interfere in any way with the business and use of the same as now operated by the party of the second part, nor to apply to the soda fountain business as now operated by various parties. The rights of the parties of the first part under this contract may be by them transferred to a company, the formation of which is now contemplated by them to be known as the Coca-Cola Bottling Company, but no transfer of their rights under this contract to any other party or parties, shall be made without the consent of the party of the second part.

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“In Witness Whereof each of the parties has hereunto affixed their signatures.

“J. B. Whitehead, (L. S.)

“B. F. Thomas, (L. S.)

“The Coca-Cola Company,

“Asa G. Candler, (L. S.)

“Pres.”

Coca-Cola Bottling Company, to which Whitehead and Thomas were authorized by the contract to transfer their rights thereunder, was organized under the laws of the State of Tennessee in December, 1899. Whitehead and Thomas conveyed to it all their rights under the contract and became its principal stockholders. Complying with the contract Coca-Cola Bottling Company established a plant in the City of Atlanta, Georgia, “for the purpose of bottling a mixture of Coca-Cola syrup and preparation with carbonic acid and water.” It established another at Chattanooga, Tennessee. At each of these plants it commenced, at its own expense, the production of carbonated bottled Coca-Cola. The demand for the bottled product rapidly increased both in volume and as to territory. The two plants in Atlanta and Chattanooga were unable to do more than meet the demand in those two cities and as the contract required that the increased demand should be supplied new plants were necessary. At this stage of the business, with the consent of the Georgia corporation, a division was made of the territory embraced in the contract. Coca-Cola Bottling Company retained the Chattanooga plant and certain of the territory, while the Atlanta plant and the remainder of the territory was acquired by the complainant, The Coca-Cola Bottling Company. Each of these bottling companies thereafter proceeded to carry out in its respective territory all the provisions of the contract. Within a few years the complainant by the expenditure of much time, money and energy procured the establishment of many additional

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plants, now numbering five hundred and eighty-eight, each supplying a defined area with the bottled drink. The additional plants were established under contracts made, with the consent of the Georgia corporation, between the complainant and the owners of the respective local plants. The value of the physical properties now held and owned by the local bottlers in the territory of the complainant is approximately ten million five hundred thousand dollars (and in the territory of Coca-Cola Bottling Company is approximately ten million dollars) while the value of the tangible properties of the defendant amounts approximately to only five million dollars. On April 24, 1915, at which time a very large proportion of the local plants had been established, the contract above set out was by mutual consent amended (with the exception of the numbers prior to each paragraph which are here added for convenience of reference), thus:

By striking out paragraph 5 and substituting the following in lieu thereof:

“(5) Party of the first part agrees to buy from party of the second part such bottlers’ syrup as may be necessary to fully supply said territory with bottled Coca-Cola; and party of the second part agrees to manufacture for and sell to party of the first part all of the Coca-Cola for bottling purposes that may be necessary for or used by said first party in supplying said territory with bottled Coca-Cola.”

By substituting the following for paragraph 6:

“(6) In consideration of the consent of The Coca-Cola Co. to the use of the name Coca-Cola as a part of the corporate name of party of the first part, and its further consent to use by first party of the trade-mark Coca-Cola on the product so sold, party of the first part agrees not to manufacture, deal in, sell, offer for sale, use or handle, nor to attempt to do so, either directly or

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indirectly, any product that is a substitute for or imitation of Coca-Cola.”

By striking out paragraphs 8, 11 and 12 and substituting therefor the following:

“(8) For said syrup so sold, party of first part agrees to pay party of the second part the sum of Ninety-two (92c) Cents per gallon. * * *”

By striking from the original contract (with the exception of the words “except the six New England States and the States of Mississippi and Texas,” paragraph 13, and inserting in lieu thereof the following:

“(11) For and in consideration of the agreement to sell and agreement to purchase, party of the second part does hereby give and convey to the party of the first part the right to use the trade-mark name Coca-Cola, and all labels and designs pertaining thereto, in connection with the product bottled Coca-Cola, in the territory heretofore obtained by party of the first part, and agrees not to convey, assign, or transfer the right of usage of said name in said territory, to any other party whatsoever; and said party of the second part further agrees to only manufacture syrup for bottling purposes in sufficient quantities to meet the requirements of party of the first part, and of Coca-Cola Bottling Company, and for the requirements of the territory not conveyed by party of the second part to either of said companies. Nothing herein, however, shall give to party of the first part any interest in the name Coca-Cola, labels, etc., except the right of usage in connection with bottled Coca-Cola, nor shall this contract in any way interfere with the use of said name Coca-Cola, labels, etc., in connection with the fountain product of party of the second part; it being understood and agreed that the use herewith given shall be confined to the

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bottled product, the name, labels, etc., in connection with the fountain product to be used as party of the second part deems fit and advisable, in any and all territory. Party of the second part does hereby select party of the first part as its sole and exclusive customer and licensee for the purpose of bottling Coca-Cola in the territory heretofore acquired by said first party, and second party agrees not to sell its fountain syrup to anyone, when party of the second part knows that said syrup is to be used for bottling purposes.” And by adding the following new paragraphs:

“(12) The rights of the party of the first part under this contract shall not be by it transferred in part or in whole, without the written consent of the party of the second part. Transfers heretofore made are hereby recognized, and confirmed by party of the second part.

“(13) Said party of the first part herein having heretofore transferred and assigned the bottling rights in portions of the territory leased and assigned to it, to sub-bottlers, it is understood and agreed by and between the parties hereto that party of first part shall use its best endeavors to have the provisions of this Amended Contract accepted by said sub-bottlers, in so far as this Amended Contract affects said sub-bottlers; but that if party of first part herein is unable to obtain the consent of any of such sub-bottlers to this Amended Contract, this Amended Contract shall not apply to any of such sub-bottlers refusing to accept this Amended Contract.

“(14) *Except As Herein Provided For*, the contract of July 21st, 1899, as amended, shall remain in full force and effect; but this Amendment shall only apply to the territory now owned or controlled by party of the first part, or that may hereafter be owned or controlled by party

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of the first part, and nothing herein contained shall affect any territorial rights heretofore conveyed, given, transferred or assigned.”

The old contracts between the complainant and its sub-bottlers were after the amendment surrendered and terminated, and the substituted, as well as all contracts subsequently made with new sub-bottlers, were made in a new form. The business of the complainant was at all times conducted without friction between it and the Georgia corporation, each in good faith observing the provisions of the contract. The business of the complainant resulted in very great profit to the Georgia corporation. Such was the situation until August, 1919, at which time the defendant, The Coca-Cola Company, a Delaware corporation, acquired the property, good will and business of the Georgia corporation, and assumed all the outstanding contracts and liabilities of that corporation. Thereafter the Georgia corporation surrendered its charter. The Delaware corporation elected as its president, as chairman of its board of directors, and as its secretary, former officers of the Georgia corporation. It also made the general counsel of the latter company one of its directors. In the year 1919 the complainant and other persons holding similar rights from the Georgia corporation under the contract of 1899 were purchasing from the latter company and marketing as bottled Coca-Cola approximately forty per cent. of its output of Coca-Cola syrup to the very great profit of the latter company. The Delaware corporation, after August, 1919, applied to the complainant for temporary modifications of the contract in the matter of the price to be paid for the syrup on the ground that the war conditions had so increased its cost of production that the syrup could not be profitably furnished by it at the contract price. The complainant on two different occasions agreed with the Delaware corporation to temporary

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modifications of the contract by which the price paid for the syrup to the defendant was greatly increased, the last temporary modification expiring by its terms on March 1, 1920. Shortly before the expiration of the last-named price modification agreement negotiations for a third price modification were about to be entered into when the complainant for the first time learned that the defendant had taken the position that the contract was terminable upon notice at the will of either party. The complainant thereupon refused to agree to a further modification of the price of the syrup unless the defendant would likewise agree at the same time to put forever at rest the question which it had raised as to the terminability of the contract. This the defendant refused to do. Thereupon the complainant, on February 27, 1920, served upon defendant herein notice that complainant required compliance with the contract in accordance with its terms. Replying to such communication the defendant on March 2, 1920, notified the complainant and other bottlers holding contracts similar to that of the plaintiff that the contract would stand terminated on May 1, 1920.

The bill charges that the contract, including amendments, in and of itself constituted a permanent and continuing contract, and not a contract terminable at the will of either party upon notice. The bill also sets up facts intended to show that the understanding of the parties at the time of making the original contract was that the contract was of a permanent character and that the subsequent statements and acts of the Georgia corporation were at all times confirmatory of that understanding. It is also alleged that the defendant in attempting to terminate the contract is acting in bad faith and that the defendant desires to obtain contracts in its own interest with complainant's sub-bottlers for the purpose of securing for itself the

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benefit of the labor, skill and money expended by the complainant in establishing and developing the bottling business throughout its territory. It is charged that if defendant be permitted to breach the contract with complainant the business of the latter will be annihilated and destroyed to the irreparable injury of the complainant. The prayers of the bill are, in substance, (a) that complainant's rights under the contract be held and decreed to be continuing, permanent and perpetual and not terminable at the will of either party without the consent of the other; (b) for specific performance; (c) for an injunction, preliminary and final, enjoining the defendant from violating any of the terms and conditions of the contract and particularly the negative covenants found in paragraph numbered 11 of the amendment of 1915; and (d) for general relief.

Of the grounds urged by the defendant in support of its motion to dismiss, those necessary, in the view I have taken of the case, to be now considered are: (1) that the contract is a contract at will, terminable upon reasonable notice; (2) that if perpetual the contract is void under the law of Georgia, the Sherman Act and the Clayton Act; and (3) that if the complainant acquired any right, title or interest in the trade-mark, good will or business of the predecessor of the defendant, the complainant has disposed of all such rights to its sub-bottlers.

In the motion to dismiss, in the discussion at bar, and in the voluminous briefs of the respective parties, numerous other questions have been pressed upon the attention of the Court, but the pivotal controversy rests upon the ascertainment of the true meaning of the contract as amended. A decision upon this matter will of itself dispose of many questions and render a consideration of the others, save only (2) and (3) above stated, unnecessary at this time.

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In determining the true import of the contract certain basic rules of construction must be borne in mind. One of these rules is that when persons put their contracts in writing the writing must, in the absence of fraud, accident or mistake, be taken as the embodiment of their whole engagement and consequently that its terms may not be varied or controlled by antecedent negotiations or declarations. *Bast v. Bank*, 101 U. S. 93, 96; *Manson v. Dayton*, 153 Fed. 258, 262; *National Bank of Commerce v. Rockefeller*, 174 Fed. 22, 26. Another rule is that in the performance of the duty of ascertaining and giving effect to the mutual intentions of the parties as expressed in the contract the court, so far as possible, may and should put itself in the position of the parties to the contract and examine into the state of things existing at the time and the circumstances under which the contract was made. *Canal Company v. Hill*, 15 Wall. 94; *Gillett v. Bank of Commerce*, 106 N. Y. 549, 55 N. E. 292. Courts "are never shut out from the same light which the parties enjoyed when the contract was executed." *Nash v. Towne*, 5 Wall. 689. Still another settled rule of construction is that the intentions of the parties as expressed in the contract must be ascertained from the agreement as a whole, from all its terms considered together, for where a contract has many provisions it is manifest that the entire intention of the parties was not expressed by any single stipulation, but by every part so construed as to be consistent with every other part and with the contract as a whole. *Pressed Steel Car Co. v. Eastern Ry. Co. of Minnesota*, 121 Fed. 609, 611; *Elliott on Contracts*, Sec. 1514. In applying these principles of interpretation courts should be constantly on guard lest, unawares, under the guise of construction, and looking too intently for means of bringing about some ultimate good, thwarting an apparent wrong, or preventing hardship, a contract other than that made by

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the parties be built up. The first of these rules of interpretation carries one beyond the antecedent declarations and negotiations to the time of the making of the contract, the then existing condition of the parties and the surrounding circumstances which under the second rule, are to be considered.

The Georgia corporation was at the time of the execution of the contract the sole and exclusive owner of the secret process or formula under which it had long been engaged in the manufacture and sale of a syrup, theretofore used only as a base for a soda fountain drink that had become known to the public by the name Coca-Cola. It had acquired a good will. It was also the sole and exclusive owner of the trade name and trade-mark. In the secret process the Georgia corporation had property or property rights of value that were salable in whole or in part. *Fowle v. Park*, 131 U. S. 88. A sale of the process might have been accompanied by a covenant that the seller would not thereafter use the process or communicate it to any other person. Such a covenant would have been valid and binding. *Central Transp. Co. v. Pullman's Car Co.*, 139 U. S. 24, 53. The process was valuable, however, only because it was a secret and only so long as it remained a secret. *Nims on Unfair Competition and Trade-Marks* (2d Ed.), Sec. 142; *John D. Park & Sons Co. v. Hartman*, 153 Fed. 24, 29. In its good will, also, the Georgia corporation had property or property rights. Good will may be bought and sold in connection with a business as an incident thereof. *Camden v. Stuart*, 144 U. S. 104, 115; *Metropolitan Nat. Bank v. St. Louis Dispatch Co.*, 36 Fed. 722, 724. The Georgia corporation likewise had property or property rights in its trade-mark. Trade-marks and the good will of a business are inseparable. In fact a trade-mark is merely one of the visible mediums by which the good will is identified, bought and sold and known to the public.

Hopkins on Trade-Marks (3d Ed.), page 227; Nims on Unfair Competition (2d Ed.), Sec. 15. "The trade-mark is the expression, the symbol, *of part* or all of the good will of the business using the mark. * * * Separate from the good will of the business it identifies, it is useless, valueless; * * *." Nims on Unfair Competition, page 378. A trade-mark is not a right in gross or at large. As an abstract right wholly dissociated from the business or merchandise with which it has become established it is not property and may not be assigned. *United Drug Co. v. Rectanus Co.*, 248 U. S. 90. For no one may sell his goods as the goods of another. Such an act would be a fraud upon the public. But where the trade-mark of a retailer is assigned by him to the manufacturer of the commodity to which the trade-mark was affixed there is no false representation to the public and such assignment is valid. *Witthaus v. Mattfeldt & Co. et al.*, 44 Md. 303. The last proposition arises, apparently, from the fact that a trade-mark does not as a matter of necessity and law import that the articles upon which it is used are manufactured by the user. It is sufficient that they are manufactured for him, that he controls their production, or that in the course of trade they pass through his hands. *Nelson v. Winchell & Co.*, 203 Mass. 75, 89 N. E. 180; *McLean v. Fleming*, 96 U. S. 245, 253. If a retailer may assign his trade-mark to the manufacturer of the article sold by the retailer it would seem that the converse is necessarily true and that the manufacturer may assign his trade-mark to another who sells the goods of the manufacturer.

The Georgia corporation was not at the time of the execution of the contract the owner of an actual bottling business, for theretofore it had not actually bottled the drink Coca-Cola. It was, however, the sole and exclusive owner of the secret process, was the sole manufacturer of the syrup made thereunder,

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and was the exclusive owner of the trade-mark and good will. The drink could be bottled. This fact appears from the contract itself. It follows that the Georgia corporation, though not then actually engaged in bottling the drink, was the sole owner of all the rights essential to the bottling and sale thereof as Coca-Cola. Out of these rights the business of bottling the drink and selling it as Coca-Cola could arise. Without these rights such business could not be established. From these facts it seems clear that at the time of the execution of the contract the business of bottling the Coca-Cola and selling it when bottled had a potential existence; that all rights in the potential bottling business were owned by the Georgia corporation, and that such business though potential and not actual could be sold. *Dickey v. Waldo*, 97 Mich. 255; *Barron v. San Angelo Nat. Bank*, 138 S. W. 142, 144; *Benjamin on Sales*, Sec. 78, 2 R. C. L., Sec. 4, page 596.

Having ascertained the surrounding circumstances and placed the contract in its original setting, the next step is to apply to it the above-mentioned third rule of construction and to search for the meaning of the contract from the agreement as a whole, from all its terms considered together, remembering that in a contract of many provisions the entire intention of the parties is not expressed by any single stipulation, but by every part so construed as to be consistent with every other part and with the contract as a whole. The complainant contends that the agreement granted and conveyed or assigned to it the sole and exclusive right to use in its territory the trade-mark and trade name upon bottled Coca-Cola; that this was a transfer of property or property rights to which the covenant of the Georgia corporation to manufacture for and to sell to the complainant Coca-Cola syrup was ancillary and incidental, and that, therefore, the contract is not at will but of perpetual

duration. The defendant, on the other hand, insists that the contract was one for the purchase and sale of Coca-Cola syrup; that the remaining covenants are ancillary and incidental to the covenants for such purchase and sale, and that, consequently, the contract, if valid, was a contract at will.

What are the stipulations of the instrument? It begins with covenants dealing from various aspects with the establishment of the *business* "of bottling a mixture of Coca-Cola syrup and preparation with carbonic acid and water." Paragraph 1 requires the establishment in Atlanta by Whitehead and Thomas of a bottling plant. Paragraph 2 requires that the plant shall be established without expense to the Georgia corporation. Paragraph 3 prescribes the relative proportion of the ingredients of the bottled drink and the pressure under which the drink is to be bottled; and paragraph 4 specifies the extent to which the bottling business must be carried on under penalty of forfeiture. Paragraph 5 is a covenant by Whitehead and Thomas to buy all syrup "necessary to a compliance" with the agreement *directly* from the Georgia corporation. Paragraph 6 prohibits the use by the bottlers of imitations and substitutes for the Coca-Cola syrup, and 7 is a covenant of the bottlers not to sell Coca-Cola "except after it is carbonated and bottled." In consideration of the foregoing stipulations of the bottlers, the Georgia corporation in paragraph 3 agreed to sell Coca-Cola syrup to the bottlers at a fixed price, and by paragraph 13 it "grants" to the bottlers "the sole and exclusive right to use the name Coca-Cola and all the trade-marks and designs for labels now owned and controlled by" the Georgia corporation "upon any bottles or other receptacles containing the mixture * * * described," and the right to sell the same in the prescribed territory. The amendment of 1915, as I understand that amendment, makes no substantial

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change in the above-stated provisions save in the price to be paid for the syrup. Otherwise, it is, in substance, only an expression of what was expressed in or necessarily implied from the original contract. I am not overlooking that part of paragraph 11 of the amendment, which says: "Party of the second part (the Georgia corporation) does hereby select party of the first part (the complainant) as its sole and exclusive customer and licensee for the purpose of bottling Coca-Cola in the territory heretofore acquired by said first party." This clause did not, however, in my view of the contract as a whole, either diminish the rights of the complainant obtained through the original contract or enlarge them.

What was the paramount purpose of the contract as ascertained from the agreement as a whole? In my opinion it was the establishment of the business of bottling the Coca-Cola drink by Whitehead and Thomas. As I understand the contract the rights in good will and trade-mark name acquired under the contract by the bottlers were the same in character and as permanent as if the Georgia corporation had sold to them an established bottling business with its trade-marks and good will. A contract merely for the purchase and sale of syrup would not be a repository for covenants making obligatory on the part of the purchaser the establishment of bottling plants having a capacity sufficient to supply the greater part of the nation and restricting the re-sale of the syrup "except after it is carbonated and bottled," nor would it be a repository for a grant of the sole and exclusive right to use the trade-mark of the vendor, not upon the syrup, but upon the product of those bottling plants. I find nothing in the contract or the circumstances attending its making to indicate that these covenants are subordinate or incidental to the covenant for the purchase and sale of syrup. On the other hand, the contract and the surrounding

circumstances show that such covenants and the covenants to purchase and sell syrup are co-ordinate and of equal rank. A contract so constituted shows an essential object and purpose immeasurably broader than the mere purchase and sale of syrup. Its real purpose neither lies in nor is revealed by any single covenant or provision, but is evinced by the result obtained by combining all the covenants. That result is the sale and purchase of a potential business and the establishment of an actual business. This result is the whole of which such covenant is merely a part. To this whole each covenant, when separately considered, is ancillary and incidental. In the transaction property rights passed from the Georgia corporation to the bottlers. The forfeiture clauses are also more in keeping with this conclusion, for while of themselves they may be an insufficient foundation upon which to base a conclusion that the contract does pass property or property rights, or is not a contract at will, yet it is manifest that in a contract passing property rights or in a contract not at will forfeiture clauses have a greater utility. A sufficient consideration for this sale is the establishment by the purchaser of the plant or plants requisite to supply the demand of the specified territory. This has been done. The method and means by which these plants (other than the Atlanta plant which was established in conformity with the contract) have been established is no concern of the defendant and is irrelevant to the question as to the character and duration of the contract. The value of the tangible assets of the plants (aggregating in the territory covered by the original contract upwards of twenty million dollars) necessary to comply with the covenants of the fourth paragraph of the contract may, however, be relevant to the question of duration of the contract as showing an improbability that it was the intention of the parties that the continuance of a business of

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such magnitude requiring for its establishment such an enormous outlay of capital should be dependent upon the arbitrary will of any one party. It is reasonable to infer that in building up a bottling business "to supply the demand in all territory embraced in the agreement," Whitehead and Thomas desired to build that business upon a sound business foundation, otherwise the agreement could have been limited to a contract for the purchase and sale of syrup. But it was not so limited. To build upon a firm business basis Whitehead and Thomas needed all rights of the Georgia corporation in its potential bottling business for the specified territory. Had the Georgia corporation at the time of making the contract been the owner of an actually established business of bottling the Coca-Cola drink the language of transfer might aptly have been somewhat different from that used by the parties in the contract under consideration, but the bottling business not having been actually established by the Georgia corporation, and it being merely the owner of rights which gave to the bottling business only a potential existence, the language employed seems appropriate and fitting for the purpose of divesting the Georgia corporation of all rights that it had to convert the potential business into an actual business, and likewise to clothe Whitehead and Thomas with such rights. The secret process or formula having a value only so long as it should be kept secret and the probability of its public disclosure increasing with the increase in the number of persons to whom it might become known by disclosures in the course of business, the Georgia corporation probably eliminated from consideration any question of an assignment of the secret process or formula to Whitehead and Thomas for use by them to the extent of their business needs in the manufacture of Coca-Cola syrup for bottling purposes. Had it adopted this method it could have sold, either for a consideration

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then paid or upon a royalty basis, the secret process for use in making Coca-Cola syrup for bottling purposes. Such a sale could have been accompanied, as appears from the authorities hereinbefore referred to, by a covenant preventing the future use of the formula for making the syrup for bottling purposes by the Georgia corporation, its successors and assigns, and by a grant of the sole and exclusive right to use the trade-mark and trade-name upon the bottled product in the prescribed territory. Such a sale would have carried with it all rights of the Georgia corporation in the potential bottling business. This method was, however, not adopted by the parties, for the Georgia corporation retained the secret and consequently the legal title thereto. The owner of such potential business could, however, by contract based upon a valuable consideration, and without the sale of the process, confer upon a vendee all rights which it, the vendor, might have in such business. This could be accomplished by the grant of the use of the trade-mark and trade name accompanied by an agreement to sell to the vendee such syrup made under the formula as might be necessary to fully supply with bottled Coca-Cola the demand of the territory acquired by the vendee, embodying covenants that it would thereafter manufacture under the secret formula syrup for bottling purposes only in sufficient quantities to meet the demand of the vendee's territory and that it would not sell its fountain syrup to anyone when the vendee "knows that said syrup is to be used for bottling purposes." Such an agreement the Georgia corporation, by the contract under consideration, made. Thereby it conferred upon the bottlers the right to acquire the syrup and it transferred to them an interest in its good will and trade-mark and trade name, the cumulative effect of which was the transfer of the potential bottling business. The right to transfer the good will is clear. The

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Georgia corporation had acquired a good will and a trade-mark arising out of and connected with the fountain drink. It is to be assumed that the bottled drink and the fountain drink were substantially identical, the bottled drink, by reason of its being bottled, being merely more available for general use. Necessarily the favor which the Georgia corporation had won from the public for its fountain drink would, at least in part, inure to the advantage of the bottled drink should the latter be labeled so as to identify it with the fountain drink. The Georgia corporation consented to this labeling and granted and conveyed to the bottlers "the right to use the trade-mark name Coca-Cola, and all labels and designs pertaining thereto, in connection with the product bottled Coca-Cola" in the prescribed territory. The extent of the good will, symbolized by the trade-mark, so transferred is disclosed by the grant of the "sole and exclusive" right thus to use the name and trade-mark, or, as expressed in the amendment, by the negative covenants of the Georgia corporation that it will "only manufacture syrup for bottling purpose in sufficient quantities to meet the requirements" of complainant and others holding similar rights under the contract and that it will not sell its fountain syrup to anyone when the complainant "knows that said syrup is to be used for bottling purposes." The good will so transferred was, as to the bottling business, perpetual and exclusive. The transfer of the interest in the trade-mark was not a transfer in gross. The right to transfer the good will and trade-mark under such circumstances is shown by the authorities hereinbefore referred to. As I see it, it is immaterial whether the interest in the trade-mark acquired by the bottlers was a legal title or merely a beneficial interest. Though not made the basis of the decision upon this matter, it may be noted that the defendant does not dispute the right of complainant

to use the trade-mark during the continuance of the contract. Consequently the ultimate question touching the trade-mark would thus seem to be, not whether the trade-mark could be assigned, but merely the extent of the interest assigned. If a limited interest therein by way of license could have been assigned no reason appears why, under the circumstances, an unlimited interest could not likewise have been assigned. In view of the use of the word "grants," denoting a transfer of property, in the original contract, and the significance in the use of the words "give and convey," being of like import with the word "grants," in the amendment fifteen years later, to confer upon the plaintiff or its predecessors in interest the right of user, in the absence of words of limitation and in the light of the fact that the essential object and purpose of the contract was the building up of the bottling business at much expense adequately to meet the contractual provisions, I am unable to find any sound principle upon which to base a conclusion that the right so conveyed was other than an absolute and unlimited right of user in the complainant to the exclusion of all others, including the Georgia corporation, its successors and assigns, in the territory in question. In fact, the Supreme Court has held that "If the owner (of a trade-mark) imposes no limitation of * * * time (upon the right to use the trade-mark) the right to use is deemed * * * perpetual." *Kidd v. Johnson*, 100 U. S. 617, 619.

Did the contract confer upon the bottlers a right to acquire from the Georgia corporation the Coca-Cola syrup necessary to the establishment and conduct of the bottling business? Paragraph 5 of the amendment of 1915 provides:

"Party of the first part (the bottler) agrees to buy from party of the second part (the Georgia corporation) such bottlers' syrup as may be

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necessary to fully supply said territory with bottled Coca-Cola; and party of the second part agrees to manufacture for and sell to party of the first part all of the Coca-Cola for bottling purposes that may be necessary for or used by said first party in supplying said territory with bottled Coca-Cola."

The defendant, regarding the contract as one merely for the purchase and sale of syrup, insists that it is so lacking in mutuality of obligation and so indefinite as to time and subject matter as to be void. Having concluded that the covenant to sell syrup is not the dominant covenant of the contract to which all others are incidental and subordinate, but that it is merely one of a number of co-ordinate covenants, the objections as to mutuality and certainty become of less importance, yet they are not wholly eliminated. The objection that there is a lack of mutuality is based upon the assumption that the only consideration for the promise to sell the syrup is the reciprocal promise to buy. This assumption is not well founded. The express covenant on the part of the bottlers to erect a bottling plant and their implied covenant to erect or cause to be erected bottling plants sufficient to supply the demand of the territory with the bottled drink, both of which have been performed, constitute sufficient consideration for the covenants of the Georgia corporation. Consideration has been defined as "the price, motive, or matter of inducement to a contract, whether it be the compensation which is paid, or the inconvenience which is suffered by the party from whom it proceeds," and again, as "any act of the plaintiff from which the defendant or a stranger derives a benefit or advantage, or any labor, detriment, or inconvenience sustained by the plaintiff, however small, if such act is performed or inconvenience suffered by the plaintiff by the consent, expressed or implied, of the defendant." Bouvier's

Dictionary, Rawle's 3d Rev. The Atlanta bottling plant was built and the remaining five hundred and eighty-seven plants in complainant's territory have been built, equipped and operated without expense to the Georgia corporation or the defendant. That the plants are not now owned by the complainant is a fact irrelevant to the matter under discussion. "Want of mutuality is no defense to either party, except in cases of executory contracts." *Grove v. Hodges*, 55 Pa. 504, 516; *Chicago, M. & St. P. Ry. Co. of Idaho v. United States*, 218 Fed. 288, 301. In *Wilson v. Clonbrock Steam Boiler Co.*, 105 Fed. 846, Judge McPHERSON, quoting from *Morse v. Bellows*, 7 N. H. 549, said:

"Nor is it necessary that the consideration should exist at the time of making the promise; for if the person to whom a promise is made should incur any loss, expense, or liability in consequence of the promise, and relying upon it, the promise thereupon becomes obligatory."

The contract is not wanting in mutuality of obligation. Has it sufficient certainty as to subject matter and time of performance? When the provisions of paragraphs 4 and 5 of the agreement as amended in 1915 are read together it is clear that the bottler is bound to buy and the manufacturer of the syrup is bound to manufacture and sell to the bottler, not merely such syrup as the bottler may desire, but sufficient syrup to enable the bottler to supply the demand for the bottled drink in all territory embraced in the agreement. Manifestly the agreement is not of that class where the amount of the commodity to be furnished depends upon the wish, will or desire of either party. A contract to furnish goods, material or other commodity sufficient for the needs of a specified undertaking is not invalid for uncertainty. *Select Pictures Corporation v. Australasian Films*, 260 Fed. 296; *Lima Locomotive & M. Co. v. National Steel C.*

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Co., 155 Fed. 77. Mere indefiniteness as to the exact amount of material to be purchased or sold under a contract is not necessarily a fatal uncertainty. Elliott on Contracts, Sec. 180. If the intention of the contract be clear the mere uncertainty as to the exact amount involved does not invalidate it. Ramey Lumber Co. v. John Schroeder Lumber Co., 237 Fed. 39. The manifest intention of the parties to the contract under consideration was that the demand of the granted territory for the bottled drink should be supplied. The exact quantity of syrup necessary to supply this demand could not in the very nature of things have been fixed at a specified number of gallons. A provision in the contract so fixing the quantity of syrup to be sold and purchased would not have been in keeping with the dominant intention of the parties. Having in mind the paramount object of the parties to the contract, it is difficult to find a measure of supply more suitable to the purposes of the contract or more definite than that employed by the parties themselves. That the quantity of syrup to be supplied was sufficiently definite for the purposes of the contract to enable the parties thereto to comply therewith has been fully demonstrated by a practical test of twenty years duration. Furthermore, as the business continued from year to year and the extent of the demand for the bottled drink became known such uncertainty as originally existed in the contract necessarily in large measure disappeared. It should be observed that the Georgia corporation, and not the bottlers, fixed the standard by which the supply was to be measured, and that this was the same standard under which the bottler was required to establish or cause to be established, under penalty of forfeiture of all contractual rights, bottling plants adequate to manufacture the bottled drink in quantity sufficient to supply the demand of all territory embraced in the agreement. Much stress has been laid by the defendant

upon the case of McCaw Mfg. Co. v. Felder, 115 Ga. 408, but that case involved a contract of a character radically different from the contract under consideration. Yet that and similar cases cited by the defendant required only that the contract be *sufficiently* definite, which necessarily means sufficiently definite under all the circumstances of the contract, having in mind its essential object and purposes. The contract is sufficiently definite as to subject matter. Is it sufficiently definite as to time? This point was made but scarcely pressed, for the defendant made its real defense upon the ground that the contract was a contract at will—a position inconsistent with that of a lack of certainty as to time. But aside from the inconsistent attitude of the defendant is it possible to say how long the covenant to supply syrup runs? Though essential to the contract this covenant is but incidental to its main purpose. As the business established upon the faith of the contract could not continue without syrup, the period for which the syrup must be supplied is found by ascertaining the duration of the contract. From what has already been said it appears that the contract is not a contract at will, but that it is a contract permanent and perpetual in its nature. *Manners v. Morosco*, 252 U. S. —; *Western Union Telegraph Co. v. Pennsylvania Co.*, 129 Fed. 849, 858. The bottling business rests upon the joint existence of two things—the continued secrecy of the process for making the syrup and the continued demand for the bottled drink. So long as both of these conditions exist the contract endures. The fact that no plan was provided for in the contract for changing the price to be paid for the syrup does not alter this result. It may well be that the price so fixed embraced such a large margin of profit that a fluctuating scale of prices was deemed unnecessary.

It is next contended by the defendant that if the

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contract be construed as it is now construed by the Court it is void under the law of Georgia, the Sherman Act and the Clayton Act. In this connection it should be observed that the effect of the contract was not a merger or consolidation of businesses theretofore existing in severality, but was the complete severance of the bottling business from the business of supplying soda fountains with the syrup, while the result which the defendant seeks under statutes intended to prevent monopoly would give to the defendant a complete and exclusive monopoly of both the fountain business and the bottling business. The accomplishment of this result through the instrumentality of the anti-monopoly statutes would, indeed, be unique. That of necessity there is competition between the bottled drink and the fountain drink cannot be seriously questioned. The contract did not fix a price for the bottled drink. It did not fix a price for the fountain drink. The defendant may sell its fountain syrup for such price as it pleases subject to the inevitable result, if it raises its price too high, that the demand for the fountain drink will decrease and that for the bottled drink increase. The converse would, of course, be true should the price of the bottled drink greatly exceed that of the fountain drink. The defendant points out certain covenants of paragraphs 6, 7, 11 and 12 of the contract as amended in 1915 to show that the contract is in restraint of trade. It cites *Floding v. Floding*, 137 Ga. 531, 73 S. E. 729, and other cases, to show that the courts of Georgia refuse to recognize an agreement not to operate the same business in a territory very large in area as being in reasonable restraint of trade. But such cases have no analogy to the case at bar, where the effect of the contract was not to transfer the whole business of the vendor, but only an incidental and potential business arising out of the main business of the vendor. It is unnecessary to analyze the several

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covenants pointed out as being in unreasonable restraint of trade. Those covenants at most operate as a partial and not as a general restraint and are "merely ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party," or were covenants necessary to protect the Georgia corporation in its retained business. Such provisions are valid. *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271; *John D. Park & Sons Co. v. Hartman*, 153 Fed. 24. I find in the contract nothing having an effect or intended to have an effect to defeat or lessen competition or to encourage or tend to create a monopoly, nor do I find anything therein that may be said to be in unreasonable restraint of trade.

The defendant has also suggested, rather than urged, that even if the complainant acquired any right, title or interest in the trade-mark, good will or business of the predecessor of the defendant, the complainant has disposed of all such rights to its sub-bottlers. This objection is based upon the provisions of the contract between the complainant and its five hundred and eighty-eight sub-bottlers, each of such contracts so far as disclosed being in the same form. Under those contracts the bottler conveyed to the sub-bottler the right the former "received from The Coca-Cola Company to use the trade-mark name Coca-Cola, and all labels and designs pertaining thereto in connection with the product bottled Coca-Cola" in the territory of the sub-bottler. The bottler agreed to obtain and furnish to the sub-bottler at \$1.20 per gallon sufficient syrup for bottling purposes to meet the requirements of the sub-bottler in his specified territory. The sub-bottler agreed, in substance, to buy of or through the bottler at the specified price all syrup required or used by the

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sub-bottler; to invest in and maintain a plant and equipment sufficient to meet the demands of the business in its territory; to allow the bottler to enter upon and examine the premises where the Coca-Cola should be bottled and prepared for market; and to allow the bottler to make any necessary examination to see that the provisions of the contract were complied with. It was further agreed that so long as the sub-bottler should comply with the terms of its contract the rights, privileges and immunities thereby granted to the sub-bottler should remain in full force and effect. The obligations imposed upon the complainant by its contract with the Georgia corporation still rested upon the former, notwithstanding its contracts with the sub-bottlers. The complainant also retained a beneficial interest in the bottling business after making the contracts with its sub-bottlers. Whether the interest so retained makes The Coca-Cola Bottling Company "the real party in interest" within the contemplation of Equity Rule 37 is a question that need not now be determined, for some of the sub-bottlers, on behalf of themselves and all other sub-bottlers to whom defendant contends the complainant has sold all its interest in the business, good will and trade-mark, have been granted leave to intervene, reserving to the defendant the right to raise any question with respect to such intervention. The right of the sub-bottlers so to intervene is supported by *Osborne v. Wisconsin Cent. R. Co.*, 43 Fed. 824, and *Prentice v. Duluth Storage & Forwarding Co.*, 58 Fed. 437. In the former case Mr. Justice Harlan, sitting at circuit, held that "where a number of persons have separate and individual claims and rights of action against the same party, but all arise from some common cause, are governed by the same legal rule, and involve similar facts, and the whole matter might be settled in a single suit brought by all of these persons uniting as co-plaintiffs, or one of the

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persons suing on behalf of the others, or even by one person suing for himself alone" one or more may sue for the whole. In the latter case Judge Sanborn, speaking for the Circuit Court of Appeals for the Eighth Circuit, said:

"That this suit was well and wisely brought admits of no discussion. Owners of lots in severalty in possession under a common source of title may join in a bill of peace to quiet their title * * * the validity of which depends entirely upon the superiority of the title of their common grantor. The law and the facts which determine the validity of the title of one such owner also determine validity of the title of every such owner. While they are owners in severalty, they are united in interest in the sole question at issue in such a case—the validity of the title of their common grantor. A suit based upon such a bill is of general equitable cognizance. It prevents a multiplicity of suits, and affords the only adequate remedy for such a multitude of several owners * * * when their common source of title is assailed."

It is also provided by Equity Rule 37 that "all persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs. * * * " Both The Coca-Cola Bottling Company and the sub-bottlers have an interest in the subject of the action and in obtaining the relief demanded by the bill of complaint. The objection of the defendant to the intervention of the sub-bottlers cannot be sustained. It follows that all persons having an interest in the subject of the action and in obtaining the relief demanded are now before the court seeking its aid in protecting the business, good will and trade-mark rights, granted and conveyed by the contract of 1899 as amended in 1915, from violation by the defendant. It, therefore,

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becomes unnecessary now to determine the relative rights of such persons.

Inasmuch as it appears from the bill of complaint that the contract of 1899 granted and conveyed property rights in and to a business, good will and trade-mark, and inasmuch as it also appears that such contract was valid, that it was not a contract at will, that all persons having any interest therein are before the court, and that the defendant is threatening to infringe those rights, the motion to dismiss the bill of complaint must be denied. Trade-mark Cases, 100 U. S. 82, and as to good will, 12 R. C. L., page 988.

The complainant's motion for preliminary injunction remains to be considered, but as the numerous affidavits and voluminous documentary exhibits filed in support of and in opposition to this motion cast no doubt upon any of the facts upon which the denial of defendant's motion to dismiss the bill of complaint is based it follows, without further consideration, that the complainant is entitled to a preliminary injunction enjoining and restraining the defendant from infringing the property rights in good will and trade-mark granted and conveyed by the contract of 1899 as amended. As an injunction so limited may tend to bring about a result fair and just to all parties I deem it unnecessary now to consider whether the complainant is entitled to a decree, absolute or upon terms, directing compliance with the covenant of the owner of the secret process to manufacture for and sell to the bottler all of the Coca-Cola syrup for bottling purposes that may be necessary for or used by the bottler in supplying the prescribed territory, and consequently consideration of that matter will be deferred until final hearing, unless the complainant shall in the meantime find that an earlier determination is essential for its protection and renew its application for a mandatory injunction.

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An order denying the motion of the defendant to dismiss the bill of complaint, and a decree for a preliminary injunction in accordance with this opinion may be submitted.

(Sgd.) HUGH M. MORRIS, J.

November 8, 1920.

COCA-COLA BOTTLING COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF DELAWARE

No. 388—IN EQUITY

COCA-COLA BOTTLING COMPANY, Complainant,

v.

THE COCA-COLA COMPANY, Defendant.

This case presents the same questions of law, under the same facts, as those already decided in No. 389, save only that the rights of the complainant are for a different territory, and also that in the contracts of the complainant with its sub-bottlers the rights of the sub-bottlers were limited to a specified term which is about to expire, no objection was raised to the right of the complainant to maintain the suit, and no sub-bottlers intervened.

For the reasons stated in the opinion in No. 389 a *like order and decree* may be submitted.

(Sgd.) HUGH M. MORRIS, J.

November 8, 1920.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF DELAWARE

No. 388—IN EQUITY

THE COCA-COLA BOTTLING COMPANY, *et al.*,
Plaintiffs,

v.

THE COCA-COLA COMPANY, Defendant.

It appearing to the Court that the above stated cause is now ripe for final decree; that the parties thereto, including all of the Intervenor actually intervening in said cause, have entered into an agreement settling and compromising said case and all questions of difference thereon arising, an original signed copy of which contract has been exhibited to the Court and a true and correct copy of which is hereto attached as Exhibit 1, and Counsel representing the several parties to said cause moving the Court to make said Agreement of compromise and settlement the decree of the Court in said cause, and all parties in open court consenting thereto;

It is *Ordered, Adjudged and Decreed*, That said agreement of settlement and compromise, as the same appears attached hereto as Exhibit 1, be and the same is made the decree of this Court; and that it is so accordingly *Adjudged and Decreed* by the Court.

That all previous orders in this case are revoked.

That all costs in the cause not heretofore paid are taxed equally against the plaintiff and the defendant, one-half to each.

In open Court this 5th day of October, 1921.

HUGH M. MORRIS,
Judge, U. S. District Court.

COCA-COLA BOTTLING COMPANY

We consent to the foregoing decree:

*Spalding, MacDougald & Sibley,
Rosser, Slaton, Phillips & Hopkins,
Chas. T. & Jno. L. Hopkins,
Ward, Gray & Neary,
Brown, Spurlock & Brown,
Plaintiff's Attorneys.*

*W. D. Thomson,
Clifford L. Anderson,
Robt. C. Alston,
Adams & Adams,
William S. Hilles,
Robert H. Richards,
Defendant's Attorneys.*

*J. B. Sizer,
Intervenors' Attorney.*

(NOTE.—This case was appealed to the Court of Appeals of the Third Circuit, but before decision the case was settled between the parties.)

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF KENTUCKY

No. 807—SEPTEMBER 23, 1916

THE COCA-COLA COMPANY
v.
THE LEONARD HOTEL COMPANY.

This cause is before me for final decree. The plaintiff is the manufacturer and seller of the well-known drink, Coca-Cola. The defendant owns and operates a hotel in Lexington, Ky., and in connection therewith a bar. At that bar it sells a drink similar in appearance and taste to plaintiff's article, known as My Coca, manufactured and sold by a concern in which defendant's proprietor and manager is the largest stockholder. The defendant had for a number of years sold Coca-Cola, but three or four years ago ceased to do so and ever since then it has sold My Coca. The complaint made against it by the bill herein, which was filed October 7th, 1915, was that it was selling My Coca as and for Coca-Cola to customers calling for Coca-Cola, and the relief sought was an injunction against a continuance of such selling.

That such selling is a wrong to plaintiff and enjoinder is well settled. That it has been so doing before the bringing of the suit is beyond question. Plaintiff's detective, Ross, testifies to sales on three separate occasions on March 4th, 1915, on four on March 5th, 1915, and on two on June 9th, 1915, on

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two on June 11th, 1915, and on one on June 14th, 1915. As to one of the sales on March 4th, Ross is corroborated by the testimony of one of plaintiff's traveling salesmen, and as to the sales in June, by the testimony of two persons employed by him to assist in his detective work. The Special Commissioner, who saw these witnesses and heard them testify, finds that their testimony is "absolutely true," notwithstanding the denial of defendant's bartenders. That they were engaged in detective work does not weaken their testimony, especially in view of the fact that there was no desire to involve defendant in a lawsuit, as shown by the fact that, after the sales in March, defendant's attention was called to the matter, with a request that such sales cease. Had this notice and request been heeded there would have been no lawsuit.)

This testimony is corroborated by certain of defendant's witnesses. Their testimony not only had this effect, but it tended to establish other such sales; indeed, it tended to establish that it was the custom before this suit was brought to make such sales, whenever opportunity afforded. H. C. Deering was an employe of defendant. He worked at the cigar stand in front of the bar, with a partition between them. He had so worked for two years. He frequently went into the bar. He testified that he had observed that when Coca-Cola was asked for the bartender explained that they did not handle Coca-Cola, but did handle My Coca. When asked as to when his attention was first called to this, he first said that it was in the last five months. He then said that it was in three or four or five months, then that he would not say that it was in six months, but in about three or four months, and then, that he had not noticed it prior to four or five months. Kit Blevins, a barber, worked in the hotel barber shop. He had worked there some time previously to June, 1915, but continuously since that time. He went into

the bar regularly, or most every day. Before then he had been in there off and on for over three or four years. He had observed the same thing that Deering had when Coca-Cola was called for. When asked when this first happened, he said that he did not remember any further back than that it happened within the last six or eight months. Further on he testified that recently when he called for Coca-Cola they would make the explanation, and when asked how recently, he said in the last five or six months back—that it had become a joke between him and the bartenders because of this suit. Ollie S. Honaker, a florist, was a patron of defendant's bar. He had been so regularly for two years. When he called for Coca-Cola he was told that they did not have Coca-Cola, but had My Coca. He was asked as to how long ago this had happened, and he said that it had been six months, in the last six months; that was as near as he could state, but it was probably longer; that he did not think that it was any less time than this, but he supposed, if anything, it was longer.

J. J. McGurk, a confectioner, was a patron also of defendant's bar. He was there on an average once a day. He sold Coca-Cola himself, and hence never asked for it there. He had, however, on a good many occasions, observed others call for it, and the explanation heretofore referred to given. He first said that he had noticed this during the last six months or eight months, and then that he had heard it within the last six months and possibly previously to that, but could not say positively.

The implication of the testimony of these four witnesses was that, before they had observed that such explanation was given, My Coca was furnished when Coca-Cola was called for, without explanation, i. e., that it was sold as and for Coca-Cola. They vary slightly as to the time when they first observed this, Deering putting the time shorter than the other

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three. They testified on February 3rd, 1916. This suit was brought October 7th, 1915, nearly four months before. The estimates as to the time were approximate only. The reasonable conclusion is that the time when they first observed this was at the bringing of this suit. Blevins testifies that the calling for Coca-Cola by him and the explanation given by the bartender was a joke between them because of the bringing of the suit. The unreliability of McGurk's testimony estimating the time is shown by the fact that he testified that a sign which defendant had placed in the bar informing customers that it did not sell Coca-Cola, but sold My Coca, had been up longer than he had observed the explanation given by the bartenders. The sign had been put up after November 12th, 1915.

The testimony of other witnesses than these four, outside of the bartenders, introduced by defendant is not sufficient to make out a different state of fact. When they testified defendant's bartenders had, no doubt, for nearly four months, at least, been quite regularly explaining that the article which they sold was My Coca and not Coca-Cola. The questions put to them covered this time. They were not limited to the time before the suit was brought. In giving estimates as to how long they had observed this they could readily fall into error. How readily they could do so is shown by the fact that one or two of them estimated that the sign which, then, had not been up for as much as three months, had been as much as, or over, a year.

Besides this evidence covering the time before the bringing of this suit, it was testified to by plaintiff's detective that after it was brought, to wit, on December 21st, defendant's head bartender sold him My Coca as and for Coca-Cola, and his testimony was corroborated by a disinterested witness. This testimony the Special Master also finds to have been "absolutely" true.

Apart from the denials on the part of defendant's bartenders as to their making such sales, the sole defense is that such sales, if made, were contrary to the instructions of the defendant's proprietor, Mr. Shouse, and it was innocent of any intent to appropriate plaintiff's business. The Special Master finds that such sales as are shown by plaintiff's evidence to have been made without explanation "were made against the proprietor's and manager's direct instructions and without his knowledge or consent or approval and were made through carelessness and inadvertence and without any intention whatever to deceive the public or to wrong the complainant." I do not find it necessary to go into the question as to the correctness of the finding. Accepting it as correct, it is not a good defense to plaintiff's right to relief. The bartenders were defendant's representatives, and it is responsible for their action. It is a matter of common knowledge that the demand for such drinks as Coca-Cola, My Coca and the like was created by plaintiff's article. My Coca resembles it in appearance and taste. The persons to whom defendant sold My Coca when Coca-Cola was called for were plaintiff's customers, i. e., persons desiring plaintiff's article. It availed itself of the opportunity presented by the call for Coca-Cola to sell its articles in its stead, and that even though full explanations were made, which it had the right to do. This condition of things called for its seeing to it that its bartenders did not sell My Coca as and for Coca-Cola. This it did not do. Plaintiff was satisfied to call defendant's attention to the wrong that was being done it, when first advised of it. Finding that the wrong continued it had no recourse but to bring this suit. And since the suit was brought it has continued. There is some evidence that the bartenders regard it as a joking matter. The sign was not heeded. It did not better conditions. If anything, it worsened them. The tendency of the

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sign is to cause the bartenders to think it is sufficient. What is needed is notice that the responsibility is on the bartenders, and if the wrong is continued he will be discharged and pains taken to see that he complies with instructions. Abundant authority exists supporting the position that plaintiff is entitled to the relief which it seeks. None other need be cited than this extract from Mr. JUSTICE BROWN's opinion in

Saxlehuer v. Siegel Cooper Co., 179 U. S. 42,
to wit:

"In the case against the Siegel Cooper Company there was no charge of an intentional fraud, and the court found there was no evidence of fraudulent conduct on its part, and dismissed the bill as to that company. As to the other two cases, the court found¹ that the clerks in charge of their stores, in response to special requests for Janes water, wrapped up and delivered Matyas water, purchased of the Eisner and Mandelson Company. In other words, they had palmed off the one for the other. We think that an injunction should issue against all those defendants, but that as the Siegel Cooper Company appears to have acted in good faith, and the sales of others were small, they should not be required to account for gains and profits. The fact that the Siegel Cooper Company acted innocently does not exonerate it from the charge of infringement."

The plaintiff is entitled to a decree. The Commissioner is allowed \$100.00 for his service.

A. M. J. COCHRAN, Judge.

September 23, 1916.

*Candler, Thomson & Hirsch, Atlanta, Georgia,
Selligman & Selligman, Louisville, Ky.*

For Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF KENTUCKY

No. 807—NOVEMBER 2, 1916

THE COCA-COLA COMPANY

v.

THE LEONARD HOTEL COMPANY.

This case having been heard by the Court and the Court being sufficiently advised, it is now *ordered and adjudged* as follows:

1. That the defendant, the Leonard Hotel Company, its agents, servants and employes and each of them be and they are hereby *enjoined* from selling My Coca or any similar drink to persons calling for Coca-Cola without first informing such intending purchaser or purchasers that the defendant does not handle Coca-Cola, and cannot sell it to them, and that the article that is offered or tendered for sale is not Coca-Cola, or in any other way selling My Coca or any other similar drink as and for Coca-Cola to such persons.
2. That the complainant recover of the defendant its costs herein expended.

A. M. J. COCHRAN,
Judge.

Nov. 2, 1916.

A copy. Attest:

J. W. MENZIES, Clerk,

By C. N. WARD, D. C.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA

CIRCUIT COURT, IN EQUITY

THE COCA-COLA COMPANY and THE COCA-
COLA BOTTLING COMPANY, Complainant,

v.

H. G. BAILEY and E. B. DONALD, Defendants.

REPORT OF STANDING MASTER.

To the Honorable, the Judges of Said Court:

This is a suit for injunction and for damages for the unlawful use of a trade-mark to which the complainants claim the exclusive right.

The bill alleges that the complainant, "The Coca-Cola Company," is the owner of a trade-mark consisting of the compound coined word "Coca-Cola"; that under said trade-mark the said complainant and its predecessors have, since the year 1887 to the present time, been selling a beverage, the component parts of which are a trade secret belonging to said complainant, and compounded by said complainant only; that its compound is known as "Coca-Cola Syrup," and under said trade-mark, is sold in foreign countries, as well as in trade with the Indian tribes, and in commerce among the states of the Union; that this trade-mark was duly registered by said complainant in the proper office in the City of Washington, on the 31st day of January, 1893; that on July 21st, 1899, said complainant assigned, with certain reservations and conditions, to J. B. Whitehead and B. F. Thomas, the exclusive right to prepare and sell the

beverage made from the said ingredients prepared by said "Coca-Cola Company," and the right to use, in said business, the said trade-mark "Coca-Cola"; that subsequently the said Whitehead and Thomas conveyed their said rights with the assent of the said Coca-Cola Company, to the complainant, The Coca-Cola Bottling Co., who now have the exclusive right to prepare, bottle and sell, under said trade-mark, the said beverage known as Coca-Cola, within the territory specified in said assignment, including the State of South Carolina; that said business has assumed large proportions and is very profitable; that the defendants, under the name of The Union Bottling Company, have engaged (presumably at at Union in the State of South Carolina) in manufacturing and selling to the public an inferior liquid, similar to said Coca-Cola, put up in bottles bearing labels upon which is printed the word "Coca-Cola," in violation of the rights of complainants; that demand has been made upon defendants to stop said violation and infringement upon the rights of complainants, which demand has been refused.

Wherefore, etc.

The prayer is for injunction and damages.

The answer practically admits the use of labels upon which are printed the words "Coca-Cola," but denies any intentional violation of any rights of the complainant, denies that as a matter of fact they have damaged the complainant, by the use of said labels, and denies the right of the complainants to enjoin the defendants from further carrying on their said business.

As to the other allegation, the defendants deny that they have any knowledge, and demand proof of the same, upon the filing of the answer, and upon notice to the defendants, a preliminary injunction was granted prohibiting the defendants to use the labels containing the symbol "Coca-Cola" until the further order of the Court.

THE COCA-COLA COMPANY

The cause having been reported to me to take the testimony and report upon the issues, I have taken the testimony which is herewith filed and upon the same respectfully report as follows: No one appeared before me for defendants.

I find as a matter of fact:

That the coined word "Coca-Cola" has been in use as a trade-mark since the year 1887, and was duly registered on January 31st, 1893.

The said trade-mark and the right to use the same have passed through several successive hands to the complainant, The Coca-Cola Company, who is now, and was at the time of the filing of the bill herein, the owner of the same.

That the complainant, The Coca-Cola Bottling Company, has the exclusive right to the use of said trade-mark in the State of South Carolina.

That the defendants were, at the time of the commencement of this suit, and until the service of the order of injunction herein, engaged in selling a beverage similar to that made by the complainants, but inferior thereto in quality, and put up in bottles upon which was pasted a label with the word "Coca-Cola" printed thereon.

That said business was conducted and said labels used without authority from the complainants, or either of them, was necessarily injurious to their business.

That the defendants were, before the commencement of this suit, requested to desist from the use of said label, but said request was refused.

That the profits realized by defendants from the use of said label amounted to the sum of about One Hundred and Twenty-five Dollars.

At common law, a trade-mark was recognized and protected by the Courts before the formation of the

government of the United States. The jurisdiction was based upon the theory of protection of the public from imposition and fraud and protection of the owner of the trade-mark from "unfair competition." The remedy was in damages, and for a long time the Courts of Equity refused to grant an injunction in such a case, holding that there was an adequate remedy at law. It was not until the time of Mansfield that injunction was allowed. In the meantime, several of the States of the American Union enacted laws for the protection of trade-marks, some of which differ materially from others. No attempt was made by the Congress of the United States to pass such a law, however, until the year 1870, when an act was passed entitled, "An Act to revise, consolidate and amend the statutes relating to patents and copyrights," part of which provided for the registration of trade-marks, and appears in the Revised Statutes as Secs. 4937 to 4947, inclusive. This was followed by the Act of 1876, which made it a criminal offense to counterfeit "trade-mark goods," or to "use or deal in trade-mark goods," the trade-mark thereon having been duly registered. Both of these acts were held by the Supreme Court, in the case of *U. S. v. Stiffins*, to be unconstitutional and void, upon the ground that Congress has no constitutional right to deal with any matter of trade, except such as related to commerce with foreign countries, or the Indian tribes, or among the States of the Union, and that the Acts in question undertook "to establish a universal system of trade-mark registration for the benefit of all, etc., without regard to the character of the trade," etc. (100 U. S. 550; *U. S. v. Koch*, 40 Fed. 250).

In the year 1881 Congress passed an Act entitled, "An Act to authorize the registration of trade-marks and protect the same" (21 Stats. at Large, 502). This Act is confined, however, to trade-marks used

THE COCA-COLA COMPANY

in foreign commerce or commerce with the Indians. By the Act of 1882 (22 Stats. at Large, 298), its provisions were extended to trade-marks used in such commerce at the time of the passage of the Act of 1881. In 1903, an Act was passed entitled, "An Act to authorize the registration of trade-marks used in commerce with foreign nations, or among the several States, or with Indian tribes, and to protect the same" (33 Stats. at Large, 724). Both the Act of 1881 and that of 1903 contain clauses saving to the owner of a trade-mark any rights he may have at Common Law or in Equity. The trade-mark in this case was adopted in 1887 and registered in 1893. Had it not been shown that it was used in foreign commerce and commerce with the Indian tribes, a question might have arisen as to the validity of the registration, inasmuch as the Act of 1881 does not provide for the registration of trade-marks used in commerce among the States. The evidence shows, however, that this trade-mark is used in foreign commerce, with the Indian tribes, and to that extent is, no doubt, conclusive as to the registration as far as it goes. But the infringement complained of occurred within the limits of one of the States. The registration was made in 1893, when there was no law for the registration of a trade-mark used solely in commerce among the States.

Can the Act of 1905, which includes such cases, be applied to a registration made before that Act was passed?

I assume that I am not required to answer this question, if it be necessary that it should be answered, and therefore leave it for the consideration of the Court.

There is no doubt that, aside from the provisions of the Registration Acts, the complainant has a right at Common Law, or in this Court, at the present time, to a remedy upon the case as established by the

evidence. Unfair competition has always been good ground for relief, either at law or in equity, and the proof here is clear that the defendants have been engaged in selling article (inferior) under a label bearing a symbol or word so nearly resembling the trade-mark of complainants as to deceive the public and injure the business and reputation of the complainants. Under such circumstances, proof of fraudulent intent is not necessary (McLean v. Fleming, 96 U. S. 245; Menendez v. Holt, 128 U. S. 514; Amoskeag Mfg. Co. v. Trainer, 101 U. S. 63).

These cases show that the complainants are entitled to a *perpetual injunction*.

As to damages, it appears from the evidence that the defendants are financially irresponsible. This, however, cannot deprive the complainants of their right to a judgment, if they are otherwise entitled thereto. In this Court, complainants are entitled to an injunction and an accounting for profits made by defendants in the unlawful business, but not to vindictive or exemplary damages (Taylor v. Carpenter, 11 Paige Ch. 292, 2 Sand. Ch. 903; Hennessy v. Wilmerding-Loewe Co., 103 Fed. Rep. 90). Defendants have admitted under oath that they made a profit of One Hundred and Twenty-Five Dollars on the sales of their compound under the spurious label "Coca-Cola." For this amount the complainants are entitled to judgment as actual damages. Counsel for the complainants has announced that they claim no more, and are willing to pay the costs of Court and fees of Standing Master if not collected from the defendants.

I find as matter of law:

That the complainants are entitled to a *perpetual injunction* against the use by the defendant of the spurious trade-mark "Coca-Cola" heretofore used by defendants.

That the complainants are *further entitled to*

THE COCA-COLA COMPANY

judgment against the defendants for the sum of One Hundred and Twenty-five Dollars and costs.

That the defendants being financially irresponsible, the complainants should be required (and have expressed their willingness) to pay the costs and expenses of this suit.

All of which is respectfully submitted.

JULIUS H. HEYWARD,
Standing Master.

Greenville, S. C.,

April 27, 1906.

I, C. J. Murphy, Clerk of the said Court, do hereby certify that the foregoing Report is a true copy of the original now on file in my office.

Given under my hand and seal of said court, at Charleston, S. C., this the 30th day of April, A. D. 1906.

C. J. MURPHY,
(Seal) C. C. C. U. S. Dist. S. C.

Candler, Thomson & Hirsch,

Atlanta, Ga.,

Samuel H. Sibley,

Union Point, Ga.,

For Complainant.

THE UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA,
IN THE CIRCUIT COURT,
FOURTH CIRCUIT

IN EQUITY

COCA-COLA COMPANY and THE COCA-COLA
BOTTLING COMPANY, Complainants,

v.

H. G. BAILEY and E. B. DONALD, Defendants.

This cause came on to be heard at this term after due notice to counsel. After hearing counsel for complainants and considering the Report of the Standing Master filed in the case, it is

Ordered and Decreed, That said Report be in all respects confirmed and stand as the judgment and decree of this Court.

It Is Further Ordered, That the complainants pay to Julius H. Heyward, Standing Master, One Hundred Dollars (\$100.00) for his fee in this case, andDollars costs of the court, for which sums in turn the complainants shall have judgment against the defendants, all to be enforced by execution on application therefor.

WM. H. BRAWLEY, U. S. Judge.

I, C. J. Murphy, Clerk of the said Court, do hereby certify that the foregoing Decree is a true copy of the original now on file in my office.

Given under my hand and seal of said Court at Charleston, S. C., this the 4th day of June, A. D. 1906.

(Seal)

C. J. MURPHY,

C. C. U. S. Dist. S. C.

THE COCA-COLA COMPANY

IN THE UNITED STATES COURT FOR THE
WESTERN DISTRICT OF VIRGINIA,
CONTINUED AND HELD
AT ROANOKE

On the 11th Day of May, 1915

THE COCA-COLA COMPANY,
v.
HEINS CIGAR COMPANY.

FINAL DECREE.

This Cause having come on for final hearing, and the pleadings, evidence and arguments of counsel having been considered, it is

Adjudged, Ordered and Decreed:

(1) That the defendant, Heins Cigar Company, and all of the officers, agents and employes of said defendant, be and they are hereby *perpetually enjoined and restrained* from applying to any syrup not made by the plaintiff the name Coca-Cola; from dispensing or selling in response to orders or requests for Coca-Cola, any beverage other than such as is made with the syrup known as Coca-Cola and made by the plaintiff, and from representing any syrup not made by the plaintiff to be Coca-Cola;

(2) That plaintiff recover of the defendant its costs in this behalf expended, to be taxed by the deputy clerk of this court at Roanoke, subject to review by this court, and that writ of execution issue therefor in accordance with law;

V. HEINS CIGAR COMPANY

(3) That all relief prayed by the plaintiff, except as hereinabove specifically granted, is denied, and that this cause be retired from the trial calendar.

A copy, *teste*:

L. T. HYATT, Clerk,
By FRANK J. HALL, Deputy.

(Seal)

Candler, Thomson & Hirsch, Atlanta, Georgia,
McCormick & Smith, Roanoke, Virginia,
For Plaintiff.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DIS-
TRICT OF OHIO,
EASTERN DIVISION

No. 438—DECEMBER 27, 1917

THE COCA-COLA COMPANY

v.

STANLEY KURTZ

Present: Honorable D. C. WESTENHAVER, U. S. Dis-
trict Judge.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof and the consent of all parties thereto, it was *ordered, adjudged and decreed* as follows, viz.:

That the Court has jurisdiction of the subject matter of the suit and of the parties thereto; that the said defendant, his agents, servants, employes, attorneys and assigns and all acting by or under his authority be and they are hereby, each and all, *perpetually enjoined and restrained* from using or employing in connection with the advertisement, offering for sale or sale of any beverage, the trade-mark "Coca-Cola" or any like word, or the word "Co-Cola" or any like word; from using or employing a script, or a type, or a style of lettering identical with or like that shown in and by Exhibit "B" attached to the bill of complaint; and further from doing any act or thing or using any name, device, artifice or contrivance which may be calculated or

likely to cause any product not the product of the plaintiff to be sold as and for the product of the plaintiff or likely to induce the belief that any product not the product of the plaintiff is the product of the plaintiff, and that a writ of injunction issue to the above effect; that the plaintiff having waived an accounting of profits and an assessment of damages by reason of the alleged conduct and acts of the defendant set out in the bill of complaint, that plaintiff, in lieu and in full of said profits and said damages thereby arising and occasioned, do have and recover from the defendant the sum of One Dollar in full of such profits and damages by reason of the alleged conduct and acts of said defendant in said bill of complaint set out, and that plaintiff do have and recover from the defendant its costs herein to be taxed.

THE UNITED STATES }
OF AMERICA, } ss.

I, B. C. Miller, Clerk of the District Court of the United States, within and for the Northern District of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original Final Decree entered upon the Journal of the proceedings of said Court in the therein entitled cause, at the term and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness my official signature and the seal of said Court, at Cleveland, in said District, this 28th day of December, A. D. 1917, and in the 142nd year of the Independence of the United States of America.

(Seal)

B. C. MILLER, Clerk.

(By) ANNA H. ELLIOTT, Deputy Clerk.

Candler, Thomson & Hirsch, Atlanta, Georgia,
Hull, Smith, Brock & West, Cleveland, Ohio,

For Complainant.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO

No. 221—IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

A. LONDON, Defendant.

FINAL DECREE.

This cause coming on for final hearing (the defendant consenting thereto), it is *Ordered, Adjudged and Decreed*, as follows:

(1) That the Court has jurisdiction of the subject matter and of the parties to this suit.

(2) That the word COCA-COLA is a valid trade-mark of which the plaintiff is the sole owner.

(3) That plaintiff alone is entitled to use the trade-mark COCA-COLA, and that its goods alone can lawfully be sold under that name.

(4) That The Coca-Cola Company, a Georgia corporation, then being the owner of the trade-mark COCA-COLA, duly registered its said trade-mark under and in conformity with the Act of Congress, approved March 3, 1881, entitled: "An Act to authorize the registration of Trade-Marks and to protect the same," and under the Act of Congress of February 20, 1905, entitled: "An Act to authorize the registration of Trade-Marks used in commerce with foreign nations or among the several states or with Indian tribes and to protect the same;" that said registrations, numbered 22,406 and 47,189 respectively, are valid and subsisting and, in connection with the





business and good will, by proper assignments duly recorded, as provided by law, became and now are the sole property of the plaintiff, and that the plaintiff is entitled to the rights and remedies provided in said statutes.

(5) That the word COLA, adopted and used by the defendants in connection with merchandise sold by him is an infringement of plaintiff's said trade-mark COCA-COLA and is a copy or colorable imitation thereof within the meaning of the Act of Congress of February 20, 1905, and that the defendant has affixed said copy or colorable imitation to merchandise of substantially the same descriptive properties as those set forth in plaintiff's said registration and has used said copy or colorable imitation in commerce among the several states of the United States, and that defendant thereby has infringed plaintiff's said registered trade-mark.

(6) That defendant has applied to packages containing his said product, decorated crowns with a color scheme and script lettering thereon so nearly resembling the distinctive decorated crowns of the plaintiff, that defendant thereby has competed unfairly with the plaintiff.

(7) That said defendant, A. London, his agents, servants, employes, attorneys, assigns and licensees, and all acting by or under his authority, be and the same hereby, each and all, are perpetually enjoined and restrained from using or employing, in connection with advertising, or offering for sale or sale of any beverage or ingredient thereof, plaintiff's trade-mark, COCA-COLA, or any like word, or the colorable imitation thereof COLA, or any like word, and from using script lettering identical with or like the script lettering used by plaintiff or defendant, and from selling or offering for sale, furnishing or supplying, in response to requests for Coca-Cola, any product, not the plaintiff's, and, further, from doing

THE COCA-COLA COMPANY

any act or thing, or using any name, artifice or contrivance which may be calculated or likely to cause any product, not the plaintiff's, to be sold as and for the product of plaintiff, and that a writ of perpetual injunction issue accordingly.

(8) That the plaintiff is entitled to have and recover of and from the said defendant, the profits derived by said defendant by reason of his infringement and unfair competition herein restrained, and for the damages sustained by the plaintiff by reason thereof, and said plaintiff electing to waive said accounting of damages and profits, the Court finds the sum of \$1.00 in lieu thereof, and it is further *ordered, adjudged and decreed* that plaintiff do have and recover of and from said defendant the said sum of \$1.00, together with the costs of this suit to be taxed and have execution therefor.

Enter:

J. E. SATER,
District Judge.

We consent to the entry of this decree:

Harold Hirsch, Edward S. Rogers and G. E. Bibee,
solicitors for plaintiff.

James Joyce and F. S. Monnett, solicitors for defendant.

THE UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF OHIO, } ss.
EASTERN DIVISION.

I, B. E. Dilley, Clerk of the District Court of the United States within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and correct copy of the original Final Decree, filed October 30, 1922, as the same appears on file and

of record in the office of the Clerk of said Court, in the therein entitled cause.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said court, in the City of Columbus, Ohio, this 30th day of October, A. D. 1922.

(Seal)

B. E. DILLEY,
Clerk.

By GERTRUDE C. CROPPER, Deputy.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIS- TRICT OF PENNSYLVANIA

No. 31—IN EQUITY

COCA-COLA COMPANY, a Cor- poration of the State of Georgia, and THE COCA-COLA BOT- TLING WORKS OF PITTS- BURGH, a Corporation of the State of Tennessee,	}	November Term 1906
v.		
E. S. FRISHKORN, a Citizen of the State of Pennsylvania.	}	

DECREE *Pro Confesso*.

This case, having been brought on for hearing, and it appearing that defendant was duly served with process on the 11th day of November, 1906; that the defendant having failed to appear and having failed to plead, answer or demur, an order for a decree *pro confesso* was duly entered on the 6th day of January, 1907; that more than thirty days have passed since the entry of the said order; the Court hereupon adjudges and decrees that complainant herein, Coca-Cola Company, is the owner and proprietor of a good and valid trade-mark for beverages, consisting of the term or designation "Coca-Cola," and that the Coca-Cola Bottling Works of Pittsburgh, complainant herein, is licensee from the said Coca-Cola Company for the territory surrounding

and including the City of Pittsburgh, Pennsylvania, respecting such trade-mark rights; and that the parties complainant herein have an established business in preparing and dispensing beverages; and that the appearance of their product when put upon the market is characteristic, and as such recognized by the trade as the bottled drink under the name or designation "Toca-Coca" is infringing upon the aforesaid trade-mark rights of these complainants, and in putting such product on the market in the form exemplified by the exhibits in this case, is engaged in unlawful competition.

It is further *ordered, adjudged and decreed* that the defendant, said E. S. Frishkorn, his agents, servants and workmen be, and hereby are, enjoined from further infringing complainants' trade-mark, and from dealing in bottled beverages which in appearance so nearly resemble complainants' product as to cause confusion in the trade; and specifically from bottling, selling or dispensing a beverage under the name "Toca-Coca," or in the form exemplified in the exhibits herein.

Per Curiam.

February 13, 1907.

*Candler, Thomson & Hirsch, Atlanta, Georgia,
Christy & Christy, Pittsburgh, Pennsylvania,
For Complainant.*

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE NORTHERN
DISTRICT OF ALABAMA
SOUTHERN DIVISION

SEPTEMBER 28, 1916

THE COCA-COLA COMPANY

v.

R. R. ROCHELLE.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
PERCY, BENNERS & BURR, Birmingham, Alabama,
For Complainant.





IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN
DISTRICT OF ALABAMA,
SOUTHERN DIVISION

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

R. R. ROCHELLE, Defendant.

This being the day regularly set for the hearing on the petition of complainant for a temporary injunction, and both parties being present and represented by counsel, the evidence being heard and considered, it is the judgment and decree of the court, and it is hereby *Ordered, Adjudged and Decreed* that a *temporary injunction* be and the same is hereby issued against R. R. Rochelle, the defendant, his agents, servants, attorneys, and all holding by or through him, forbidding and enjoining him or them from using the name "Caro-Cola" in the form and fashion as the same by the evidence is shown to be now used by the defendant, and as disclosed by the caps on bottles attached as exhibits to the affidavits of complainant.

It is *Further Ordered, Adjudged and Decreed* by the Court that a copy of this order be served upon the defendant, or upon his attorney of record, W. A. Denson, such service to be made by the attorneys for the attorneys for the complainant, and that this order take effect from the time of such service.

All other matters are reserved.

This the 26th day of May, 1916.

(Signed) W. I. GRUBB,
Judge.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN
DISTRICT OF ALABAMA,
SOUTHERN DIVISION

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

R. R. ROCHELLE, Respondent.

This cause coming on for final trial, and being considered by the court, it is accordingly *Ordered, Decreed and Adjudged* by the court, in accordance with the agreement on file and with the testimony heard in said cause, that the temporary injunction heretofore issued in this cause be and the same hereby is now made permanent; and that the said defendant be and he hereby is forever and *perpetually enjoined* from the acts forbidden in the preliminary injunction.

It is *Further Ordered, Adjudged and Decreed* that all costs be and the same hereby are taxed against the defendant.

This the 28th day of September, 1916.

W. I. GRUBB,
Judge.



IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE WESTERN
DISTRICT OF MISSOURI

APRIL 5, 1922

THE COCA-COLA COMPANY

v.

R. E. MURPHY, Trading as THE STAR BOTTLING
WORKS.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
MANN & MANN, Springfield, Missouri,
For Complainants.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF MISSOURI

No. 26

THE COCA-COLA COMPANY, Complainant,

v.

R. E. MURPHY, Trading as THE STAR BOTTLING
WORKS, Defendant.

FINAL DECREE.

The within case coming on for hearing and by and with the consent of all parties of their counsel, it is *considered, ordered and decreed*:

First: That the court has jurisdiction of the subject matter and of the parties to this suit.

Second: That the word Coca-Cola is a valid trade-mark of which plaintiff is the sole owner.

Third: That plaintiff alone, is entitled to use the trade-mark Coca-Cola and that its goods alone can lawfully be sold under that name.

Fourth: That plaintiff being the owner of the trade-mark Coca-Cola, duly registered its said trade-mark under and in conformity with the Act of Congress approved March 3, 1881, entitled: "An Act to authorize the registration of trade-marks and to protect the same," and under the Act of Congress of February 20, 1905, entitled: "An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several states or with Indian Tribes and to protect the same," that said

registrations numbered 22,406 and 47,189, respectively, are valid and subsisting, and are the sole property of the plaintiff, and that the plaintiff is entitled to the rights and remedies provided in said statutes.

Fifth: That the words "Star Coke," "Coke" and "Cola" adopted and used by the defendant, are, and each of them is, an infringement of the plaintiff's said trade-mark Coca-Cola and is a copy or colorable imitation thereof, within the meaning of the Act of Congress of February 20, 1905; and that the defendant has affixed said copy or colorable imitation to merchandise of substantially the same descriptive properties as those set forth in plaintiff's said registrations and to labels, signs, prints, packages, wrappers and receptacles intended to be used and used upon and in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registrations and has used such copy or colorable imitation contrary to the rights of plaintiff herein; and that the defendant thereby has infringed the plaintiff's said registered trade-mark.

Sixth: That the defendant has used and applied to packages containing its said product, decorated crowns with a color scheme and script lettering thereon so nearly the same as the distinctive crowns and script lettering of the plaintiff as to be substantially indistinguishable therefrom, and that the defendant thereby has competed unfairly with the plaintiff.

Seventh: That the defendant, R. E. Murphy, trading as The Star Bottling Works, his agents, servants, employes, attorneys, licensees, transferees and assigns and each and all thereof and all acting by or under his authority be and are each and all *perpetually enjoined and restrained* from using or employing or authorizing the use or employment, in connection with the manufacture, advertisement, offering for sale, or sale of any beverage or ingredient thereof, of plaintiff's trade-mark Coca-Cola, or any like word,

THE COCA-COLA COMPANY

or the colorable imitation thereof, "Star Coke," "Coke," or "Cola," or any like word; from using or employing or authorizing the use or employment of designs, devices, script lettering, crowns identical with or like the designs, devices, script lettering, or crowns of the plaintiff, or the designs, devices, script lettering, or crowns used by the defendant and referred to in the bill of complaint herein, and further from doing any act or thing or using any name or names, devices, artifice or contrivance which may be calculated or likely to cause any product not the plaintiff's to be sold as and for the product of the plaintiff, and that writs of injunction accordingly issue forthwith.

Eighth: That all labels, signs, prints, packages, wrappers, or receptacles in the possession of the defendant bearing the colorable imitation "Star Coke," "Coke," or "Cola," of the plaintiff's registered trade-mark Coca-Cola be forthwith delivered up for destruction, provided, however, that the bottles of the defendant with the name blown therein may be used in the sale of drinks not resembling that of the plaintiff where the name Coca-Cola is removed or hidden and the name of the contents of said bottles plainly shown on same.

Tenth: That defendant pay the costs of this suit to be taxed, including all costs in this court, and that upon taxation plaintiff have execution therefor.

This 5th day of April, 1922.

(Sd). ARBA S. VAN VALKENBURGH,
District Judge.

Consented to:

(Sd) *Mann & Mann and Candler, Thomson & Hirsch*, for plaintiff.

(Sd) *R. E. Murphy*, defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF LOUISIANA

No. 13,405—IN EQUITY

THE COCA-COLA COMPANY

v.

A. L. PILSBURY, JR.

This cause came on to be heard this day, when:

Considering the joint motion of counsel for complainant and for defendant, and the stipulation and agreement therein, all on file herein, and in accordance therewith:

It Is Ordered, Adjudged and Decreed: That the preliminary injunction herein issued in favor of complainant and against the defendant, *enjoining* complainant “from manufacturing, preparing, selling or supplying others for sale, any drink, syrup or extract under the mark, symbol or name of ‘Ko-Kola,’ or other device identical with or like Coca-Cola, or from using any other name or device calculated to induce the public to believe that the drink, syrup or extract of defendant is the same as Coca-Cola, be *maintained and perpetuated*; and that the demand of your orator for damages herein be dismissed as having been compromised; and that the appointment of the Master herein, to hear evidence, etc., be revoked, as no longer necessary.

Decree rendered and signed in Open Court this (5th) Fifth day of January, A. D. 1907.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.,
John May, New Orleans, La., for complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF LOUISIANA

No. 13406—IN EQUITY

THE COCA-COLA COMPANY

v.

THE AMERICAN BOTTLING WORKS.

This cause came on to be heard, this day, when:

Considering the joint motion of counsel for complainant and for defendant, and the stipulation and agreement therein, all on file herein, and in accordance therewith:

It Is Ordered, Adjudged and Decreed, That the preliminary injunction herein issued in favor of complainant and against the defendant, *enjoining* the complainant

“from any further use of the mark or symbol ‘Ko-Kola,’ or any bottled drink similar to the bottled drink known as ‘Coca-Cola,’ manufactured by the complainant, as described in the Bill of Complaint herein, or from in any other manner, infringing upon the trade-mark or trade rights of the complainant”

be *maintained and perpetuated*; and that the demand of your orator for damages be dismissed, as having been compromised; and that the appointment of the Master herein, to hear evidence, etc., be revoked as no longer necessary.

Decree rendered and signed in Open Court on this (5th) fifth day of January, A. D. 1907.

(Signed) CHARLES PARLANGE,
U. S. Judge.

V. THE AMERICAN BOTTLING WORKS

CLERK'S OFFICE:

I Certify the foregoing to be a true copy from the original record of this office.

Witness my hand and seal of said Court, at the City of New Orleans, this 10th day of September, 1913.

H. J. CARTER, Clerk,
(Sd.) By W. B. DONOVAN,
Deputy Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.,
John May, New Orleans, La.,
For Complainant.

THE COCA-COLA COMPANY

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA,
NEW ORLEANS DIVISION
(Late Circuit)

No. 13406

THE COCA-COLA COMPANY
v.
THE AMERICAN BOTTLING WORKS.

Whereas, the plaintiff herein has instituted proceedings against the defendant to have them declared to be in contempt of court by reason of the fact that they were bottling and selling the drink known as "Gay-Ola" in violation of the injunction and decree rendered herein on the 5th day of January, 1907; and, whereas, defendant was not prior to this date aware that said action on their part was in contravention of plaintiff's rights, but now recognizes that the bottling and selling of said "Gay-Ola" was in violation of said injunction and decree, and a contempt of court,

Now, therefore, it is hereby stipulated and agreed between the parties hereto through their undersigned counsel that defendant will immediately cease and never hereafter again engage in under any circumstances the bottling and selling of the drink known as "Gay-Ola."



IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE SOUTHERN
DISTRICT OF FLORIDA
IN CHANCERY

MARCH 3, 1913

THE COCA-COLA COMPANY

v.

LOUIS W. HANNE and FREDERICK H. HANNE,
doing business as HANNE BROTHERS, a
Partnership.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
COOPER & COOPER, Jacksonville, Florida,
For Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF FLORIDA,
IN CHANCERY

THE COCA-COLA COMPANY,

v.

LOUIS W. HANNE and FREDERICK H. HANNE,
doing business as HANNE BROTHERS, a
Partnership.

Whereas, a stipulation and agreement of complainant and defendants has been filed in the above-entitled cause, whereby it is stipulated and agreed by and between said complainant and defendants that a decree shall be rendered by the Court in said cause in accordance with the allegations and prayers of the bill of complaint therein, and that a perpetual injunction be issued against the defendants as prayed in said bill of complaint, and that defendants shall pay the costs that shall be taxed in said suit, but that there shall be no decree against the defendants for any accounting for profits from the manufacture or sale of the product designated as "Hanne's Coca & Kola," or for any damages to complainant in the premises, for manufacture or sale of said Hanne's Coca & Kola prior to this suit.

Now, it is therefore *considered, ordered, adjudged and decreed* that the defendants, and all of their associates, salesmen, servants, clerks, agents and workmen, employes and attorneys, and each and every person claiming under them or by or through said defendants, or in any way connected with their business, be and they are hereby *perpetually enjoined and restrained*:

1. From in any way or manner making or selling a product under the name of "Hanne's Coca & Kola," or in any way so as to pass off the same as and for the product of said complainant, or in any such way as to enable others to pass off the same as and for the product of complainant.

2. From using in any form whatsoever the name "Hanne's Coca & Kola," or any name that is a colorable imitation of the name Coca-Cola, as applied to a soft drink.

3. From using any name sufficiently similar to the name Coca-Cola as applied to any soft drink as to cause deceit.

4. From advising, conspiring or telling retailers, or any person selling a soft drink that the said drink of said defendants can be sold as genuine Coca-Cola, or can be substituted therefor.

5. From marketing its product in the same identical color which has for so long been used by said complainant in marketing its product.

6. From suggesting, directly or indirectly, to retail dealers or anyone, the substitution of any beverage not made by said complainant as and for Coca-Cola when Coca-Cola is called for, and from placing in the hands of retail dealers any drink so manufactured, packed, marked, made or otherwise marketed in such manner as to cause the substitution thereof as and for complainant's said product, and which may be in the hands of unscrupulous dealers an instrument of fraud, and from any other act in the premises in any manner or form calculated to deceive.

It is further *ordered, adjudged and decreed* that complainant has and have the sole and exclusive right to the use of the trade-mark or trade-name, Coca-Cola, in connection with a drink or beverage.

It is further *ordered, adjudged and decreed*, as stipulated and agreed in said stipulation and

THE COCA-COLA COMPANY

agreement by and between complainant and defendants, that defendants shall pay the costs in said suit.

Done and Ordered this 3rd day of March, A. D. 1913.

(Signed) JOHN M. CHENEY, Judge.



IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF
KANSAS
SECOND DIVISION

OCTOBER 9, 1912

THE COCA-COLA COMPANY
v.
THE COX BOTTLING COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
HOLMES, YANKEY & HOLMES, Wichita, Kansas,
For Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF KANSAS

IN EQUITY

THE COCA-COLA COMPANY, a corporation,
Complainant,

v.

THE COX BOTTLING COMPANY, a corporation,
Defendant.

DECREE.

This cause came on to be heard on this 9th day of October, 1912, upon the pleadings and upon the stipulations of parties and from the stipulation as filed, the court finds that the plaintiff is entitled to the relief prayed for in its bill of complaint, as to the injunction demanded, and that as to the matter of damages suffered by the plaintiff, the court finds that the same have been adjudged and settled between the parties hereto.

It is, therefore, *ordered, adjudged and decreed* that the defendant, the Cox Bottling Company, its agents and servants be and they are hereby *perpetually enjoined and restrained* from in any way or manner making or selling its products of soft drinks in such a way as to pass off the same as and for the product "Coca-Cola" and from using in any way whatsoever the name "Co Kola" as applied to any drink or from using any name which is sufficiently similar to the name "Coca-Cola" as applied to any drink as to cause deception and deceit, and the defendant, its

v. THE COX BOTTLING COMPANY

agents and servants are hereby *perpetually enjoined and restrained* from using, purchasing or procuring any mark, bottle, crown, stamp or label having printed or stamped thereon the words "Co Kola" or any other word sufficiently similar to the words "Coca-Cola" as to cause deception or deceit.

It is further *ordered and adjudged* that the defendant pay all costs of this action to be taxed by the clerk.

JOHN C. POLLOCK,
Judge.

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF
KANSAS

SECOND DIVISION

IN EQUITY—JANUARY 22, 1913

THE COCA-COLA COMPANY, Complainant,

v.

RALPH E. LIGHTNER and WILLIAM H.

HAZELTON, partners doing business

under the name and style of

ALLEN BOTTLING COMPANY, Defendants.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,

HOLMES, YANKEY & HOLMES, Wichita, Kansas,

For Complainant.





IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF KANSAS, SECOND DIVISION

IN EQUITY

THE COCA-COLA COMPANY, a corporation,
Complainant,

v.

RALPH E. LIGHTNER and WILLIAM H.
HAZELTON, partners doing business
under the name and style of
ALLEN BOTTLING COMPANY, Defendants.

DECREE.

This cause comes on to be heard on this 22nd day of January, 1913, upon the pleadings and upon the default of the defendants for answer and from the examination of the Bill of Complaint herein filed, the Court finds that the complainant is entitled to the relief prayed for in its Bill of Complaint, as to the injunction demanded, and that as to the matter of damages suffered by the complainant, the court finds that the said matter should be referred to a Special Master to hear the evidence and to ascertain the amount of damages suffered by the complainant by reason of the acts complained of against the defendants.

It is, therefore, *ordered, adjudged and decreed* that the defendants Ralph E. Lightner and William H. Hazelton, partners doing business under the name and style of Allen Bottling Company, their associates, agents, employes and servants be, and they are hereby *perpetually enjoined and restrained* from

THE COCA-COLA COMPANY

in any way or manner making or selling their products of soft drinks in such a way as to pass off the same as and for the product "Coca-Cola" and from using in any way whatsoever the name "Coke-Ola" as applied to any drink or syrup used in the preparation of any drink, or from using any name which is sufficiently similar to the name "Coca-Cola" as applied to any drink or syrup which is used in the preparation of any drink as to cause deception and deceit, and the defendants, their agents, servants and employes are hereby *perpetually enjoined and restrained* from using, purchasing or procuring any mark, bottle, crown, stopper, stamp or label having printed or stamped thereon the words "Coke-Ola" or any other word sufficiently similar to the words "Coca-Cola" as to cause deception and deceit, and that the defendants, their agents, servants and employes are hereby *perpetually enjoined and restrained* from using any bottles for the purpose of containing any drinks upon which bottles there shall be stamped or blown into glass the words "Coca-Cola."

It is further *ordered and adjudged* that the defendants pay all the costs of this action up to the time of and including the entering of this decree, which costs are to be taxed by the clerk.

It is further *ordered* that the appointment of a Special Master to hear and ascertain the damages, if any suffered, by the complainant which shall be made hereafter upon the application of the parties hereto.

JOHN C. POLLOCK,
Judge.

Coca-Cola

KOS-KO!Q

IN THE CIRCUIT COURT
OF THE UNITED STATES
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION

IN EQUITY—OCTOBER 9, 1908

THE COCA-COLA COMPANY

v.

MAX JACOBS and HARRY RACUSIN and IKE
MICHELSON, trading as the WESTERN BOT-
TLING WORKS.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
JOHN W. HILL, Chicago, Illinois,
For Complainant.

THE COCA-COLA COMPANY

UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

IN EQUITY

Present: HON. WM. H. SEAMAN, Circuit Judge.

COCA-COLA COMPANY, a Corporation,
Complainant,

v.

MAX JACOBS and HARRY RACUSIN and IKE
MICHELSON, trading as THE WESTERN
BOTTLING WORKS, Defendants.

DECREE.

This cause coming on to be heard it is, by consent of the parties, hereby *adjudged, ordered and decreed* as follows:

First: That Coca-Cola Company, the complainant herein, is the sole and exclusive owner of a secret process for the manufacture of a certain beverage which ever since complainant's incorporation and for a long time previously by its predecessor, has been and is termed and known by the trade name of "Coca-Cola"; that said beverage has been generally and exclusively sold throughout the United States, including the State of Illinois, by its said trade name of "Coca-Cola," and has been extensively and exclusively advertised by such name, whereby said beverage has come to be known to the public by its said trade name "Coca-Cola"; that by virtue of its character and its long continued and exclusive use by the complainant and its predecessor in business, the said

name "Coca-Cola" has come to signify in the trade that the beverage bearing said name is the product of the complainant; that the complainant and its predecessor by the adoption of and long continued use of the word "Coca-Cola" to designate the said beverage manufactured and sold by it and the registration of the said fanciful compounded word "Coca-Cola" in the United States Patent Office, as a trade-mark to designate its goods on January 31, 1893, certificate No. 22,406, and the re-registration in the United States Patent Office of the same compounded word on October 31, 1905, certificate No. 47,189, became the sole and exclusive owner of the use of said compounded words "Coca-Cola" as a trade-mark to designate the said beverage manufactured and sold by it and for a long time known to the trade by the trade name "Coca-Cola."

That the defendants, Harry Racusin and Ike Michelson, trading as the Western Bottling Works, have heretofore marketed a beverage under the name "Kos-Kola" of the same general color and appearance as complainant's "Coca-Cola," placing the same in bottles of the same general size and form and sealed with a metal cap, all closely resembling in appearance the bottles and the bottled beverage "Coca-Cola," as placed upon the market by the authorized bottlers of the complainant; that the defendant, Max Jacobs, through his employes has sold said so-called "Kos-Kola" in various theaters and other places in Chicago where he has a concession, for sale of articles of this kind, both in bottles and in glasses; that in offering said spurious beverage "Kos-Kola" for sale in the bottles and in glasses, as aforesaid, the vendors, the employes of said Max Jacobs, call and announce the sale of "Kos-Cola," and other like terms, so closely resembling in sound the words "Coca-Cola" as to lead purchasers to believe they are purchasing the complainant's said beverage, "Coca-Cola."

VII. The complainant has sufficient interest in the

THE COCA-COLA COMPANY

subject matter of the suit to maintain it. It retains title to the trade-mark and is directly interested in the infringement of it with reference even to bottled goods, since the diminution of sales, by infringement, of the bottlers reflects on its sales to the bottlers.

VIII. The Act of February 20, 1905, does not seem to me to be open to the constitutional objections asserted against it by respondents.

IX. The probability of complainant's ultimate success seems to me great enough to justify the issue of the temporary injunction. Allowance of damage for infringement is an inadequate remedy to the plaintiff because of the impossibility of any accurate measurement of its accrued damages and the uncompensated inroad on its good will by continued use of defendant's mark. The same may be said of the defendant's right to indemnify an injunction bond. However, the defendant can continue its business, using a different mark or none at all, so that there will not be a total interruption of its business, and the trial of the cause can be speeded to final decree by any reasonable order desired by defendant, and all reasonable protections given it by requiring the execution of a proper injunction bond. I think the greater probability of injury, not capable of being indemnified against, is with the denial of the temporary injunction.

It is therefore *further adjudged and decreed*, that the defendants, Max Jacobs and also Harry Racusin and Ike Michelson, trading as the Western Bottling Works, they and each of them and each of their agents, attorneys, workmen, employes and representatives are hereby *enjoined* from directly or indirectly manufacturing, bottling or selling or offering for sale, proclaiming or announcing for sale any beverage whether bottled or in the glass as "Coca-Cola", "Kos-Kola", "Cold-Cola", or by any other name, term or expression so similar in sound or in appearance as to lead purchasers to believe that they are

purchasing the beverage known as "Coca-Cola", manufactured by and the product of the complainant herein or from in any manner infringing upon the trade name or the trade rights of the complainant, and diverting or seeking to divert to them, or either of them, sales that would otherwise come to the complainant and its representatives or aid said defendants or either of them in consummating sales by inducing purchasers to believe that they are purchasing the complainant's goods.

The complainant having admitted in open court that the defendants have made full settlement and satisfaction for all damages, savings and profits on account of their said infringement of said trade-mark and their unfair competition with complainant's business in the manufacture and sale of said beverage, and also of all costs on account of this litigation, a reference to a Master is waived by the complainant herein and this decree is hereby made *perpetual and final* without costs from either party to the other.

NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION. }

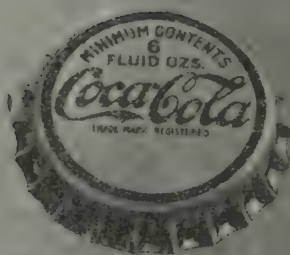
I, H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the Decree entered of record in said Court on the ninth day of October, A. D. 1908, in the cause wherein Coca-Cola Company, a corporation, is the complainant and Max Jacobs *et al.* are the defendants, as the same appears from the original records of said court, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in

THE COCA-COLA COMPANY

Chicago, in said District, this ninth day of October,
A. D. 1908.

(SEAL) H. S. STODDARD, Clerk.
(By) ARTHUR E. CLAUSSEN, Deputy.



IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE NORTHERN
DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN EQUITY—JULY 11, 1913

THE COCA-COLA COMPANY, Complainant,
v.
NATIONAL SYRUP COMPANY, Respondent.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
PERCY, BENNERS & BURR, Birmingham, Alabama,
For Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ALABAMA, SOUTHERN DIVISION

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

NATIONAL SYRUP COMPANY, Respondent.

This being the day heretofore set for the hearing of the petition of complainant for a writ of injunction as in said petition set forth, and said parties being now in open court,

It is *ordered, adjudged and decreed* by the Court that the Complainant is entitled to the relief prayed for.

It is *further ordered, adjudged and decreed* by the Court that the respondent, National Syrup Company, its associates and representatives, be and they hereby are *perpetually enjoined and restrained* from in any way or manner making or selling its products in such way as to pass off the same for and as the product of complainant; and they be and hereby are restrained from using in any form whatever the name "Cafa Cola", or the words "Coca" or "Cola" as applied to any drink or syrup from which drinks are made; or from using said words upon the caps of bottles in which said drinks might be bottled; or in any other advertising way or for any other purpose applicable to the manufacture and sale of a drink.

And respondent consenting to the rendering of this decree in open court, it is *further ordered, adjudged*

v. NATIONAL SYRUP COMPANY

and decreed that this injunction be and the same hereby is made permanent; and that the complainant is not entitled to any damages on account of the former use of said name; and that this decree shall stand as a final decree in said cause; the costs of said suit to be taxed against the complainant, for which execution may issue.

This 11th day of July, 1913.

WM. I. GRUBB,
Judge.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF KENTUCKY

THE COCA-COLA COMPANY, Complainant,

v.

FRANK ROTELLA, doing business under the name of the ROTELLA BOTTLING COMPANY; CHARLEY ZALFONTA, doing business as the ANSONIA CLUB; G. MAZZA, ISAAC LIEBERMANN and LOUIE LIEBERMANN, doing business under the name of LIEBERMANN BROTHERS, and L. B. BOTTLERS; JOHN SPANG, HERMAN LEVIN, JOHN LEVIN and NATHAN LEVIN, doing business as H. LEVIN & SONS, BOTTLERS; GEORGE H. HORNING; ALEXANDER BINSTOCK; JOHN GASH and RICHARD LAFKOWITZ (the name "John" and "Richard" being fictitious, defendants' real name being unknown to complainant), doing business under the name of GASH & LAFKOWITZ; JULIUS JOACHIMSTAHL; ANDREW DEICH (the name "Andrew" being fictitious, defendant's real name being unknown to complainant); and EDWARD MENDEL (the name "Edward" being fictitious, defendant's real name being unknown to complainant), Defendants.

This Cause coming on to be heard on complainant's motion for a final decree, the complainant appearing by its solicitors *Bedle & Kellogg*, of Jersey City, New Jersey, *Harry D. Nims* and *Edward D. Brown*, of New York City, and the defendant appearing by their solicitors, *Grosvenor Nicholas, Esq.*, of the City of New York; and it appearing to the court that the issue involved herein has been settled and agreed upon by the parties hereto, and the defendants

agreeing to consent to the entry of a final decree in the form following:

Now, on motion of *Frederick W. Kellogg* and *Harry D. Nims* of Counsel for the complainant, it is

Ordered, Adjudged and Decreed that the defendants Frank Rotella, Charles Zalfonta and C. Mazza be and they hereby are *perpetually enjoined and restrained*,

1. From making, concocting or compounding any syrup or substance adopted to be used in the preparation of a beverage with the intent to use the name for making such a beverage to be dispensed as and for Coca-Cola the product of the complainant.

2. From selling any syrup adopted to be used in the preparation of a beverage having the characteristics of Coca-Cola with the intent and knowledge or even suggestion that the same be used for preparing a beverage to be dispensed as and for said Coca-Cola.

3. From selling any beverage under the name of "Koka-Nova."

4. From manufacturing, offering for sale or selling any beverage other than Coca-Cola so packed or dressed as to be likely to be mistaken for or confused with Coca-Cola, the product of the complainant.

5. From selling or exposing for sale any beverage other than Coca-Cola and having the peculiar and distinctive color, appearance and flavor of Coca-Cola or any such near approach thereto as may be likely to deceive purchasers without such differentiation as will effectually distinguish it from Coca-Cola the product of the complainant.

6. From any use whatever in the sale of any soft drink of the name Coca-Cola or of the script, label, or cap long used by the complainant in the sale of its product.

That no accounting of profits and damages is ordered from the defendants Frank Rotella, Charley

THE COCA-COLA COMPANY

Zalfonta or C. Mazza, this injunction being given by them in full satisfaction of damages and profits and costs.

(Signed) JOHN RELLSTAB,
U. S. District Judge.

I consent to the
entry of the foregoing decree:

Grosvenor Nicholas,
Solicitor for Defendants
Rotella, Zalfonta & Mazza.

Francesco Rotella

Witness: Maurice J. Moore.

(The foregoing decree was taken against each of the defendants named in the above stated case, separate decrees being taken in each case. However, the above is a correct copy of all decrees taken, each being dated April 21, 1913.)

Candler, Thomson & Hirsch, Atlanta, Ga.,
Frederick W. Kellogg,
Harry D. Nims,

Solicitors and of Counsel for the
Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ALABAMA, SOUTHERN DIVISION

IN EQUITY

THE COCA-COLA COMPANY

v.

CROWN CITY BOTTLING & SYRUP COMPANY

TEMPORARY DECREE.

This cause coming on to be heard upon the petition of the complainant for a temporary injunction, and both parties being present in Court represented by counsel, it is now *ordered, adjudged and decreed* by the Court that the respondent herein, Crown City Bottling and Syrup Company, and all of its associates, salesmen, servants, clerks, agents, workmen, employes and persons claiming or holding under or through said respondent be and they hereby are enjoined and restrained from bottling or selling in bottles, or in using in any form whatsoever for the purpose of selling their product, bottles upon which the words "Coca-Cola" are blown or printed.

It Is Further Ordered, Adjudged and Decreed by the court that notice of this injunction be given to respondent by serving upon its attorney of record a copy of this order.

It Is Further Ordered, Adjudged and Decreed by the Court that the other questions raised in said petition for a temporary injunction be passed until Tuesday, July 23rd, 1912, at ten o'clock, A. M.

This the 16th day of July, 1912.

(Signed)

W. I. GRUBB,

Judge of the District Court.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ALABAMA, SOUTHERN DIVISION

IN EQUITY

THE COCA-COLA COMPANY

v.

CROWN CITY BOTTLING & SYRUP COMPANY

FINAL DECREE.

This cause coming on for final hearing, and being regularly called, *it is ordered, adjudged and decreed* by the court that the temporary injunction heretofore rendered in said cause be and the same is hereby made in all respects permanent.

It Is Further Ordered, Adjudged and Decreed that the complainant has in open court remitted its claim for any damages.

It Is Further Ordered, Adjudged and Decreed that all the costs of this proceeding be taxed against respondent, for which let proper execution issue.

(Signed) W. I. GRUBB, Judge.

*Candler, Thomson & Hirsch, Atlanta, Ga.,
Percy, Benners & Burr, Birmingham, Ala.*

For Complainant.

IN THE CIRCUIT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ILLINOIS, EASTERN DIVISION

No. 30,595—IN EQUITY

Monday, December 11, 1911.

Present: HONORABLE CHRISTIAN C. KOHLSAAT, Circuit
Judge.

THE COCA-COLA COMPANY

v.

FRANK I. WOLGAST, RALPH ELDON BIGELOW,
co-partners doing business in the name of Wol-
gast & Bigelow.

This cause coming on for final hearing upon the bill of complaint and the exhibits thereto and the answers of the defendants, and the defendants through their solicitor, William F. Bigelow, being present in open court and in open court consenting to this decree:

It is by the Court *Ordered, Adjudged and Decreed* that the defendants, Frank R. Wolgast and Ralph Eldon Bigelow, and each of them, their respective attorneys, servants, agents, associates, workmen, employes, representatives and all claiming or holding under or through them, be, and they are hereby *perpetually enjoined and restrained* from in any way or manner making or selling or attempting to make or sell their product as described in the bill of complaint in such a way as to pass for the same as and for the product of the complainant as described in said bill of complaint and from using in any form whatsoever,

THE COCA-COLA COMPANY

the name, Coca-Cola or Coca-Kola, either alone or in association with any other words and from any acts in the premises in any manner or form calculated to deceive any person into believing the product of the defendants to be the product of the complainant.

It is further *Ordered, Adjudged and Decreed* that the defendants deliver up to said complainant any and all labels in the possession of said defendants which labels bear the name of Coca-Cola or Coca-Kola alone or in association with any other words. The complainant in open court waives all right to recover damages for or to compel the defendants to account for profits derived from any transactions of the defendants occurring prior to the entry of the restraining order of December 4th, 1911.

It is further *Ordered* that no costs herein shall be taxed against the defendants.

And the Court further *Orders* that a writ of permanent injunction issue to the marshal of this court to be by him served upon the defendants, Frank R. Wolgast and Ralph Eldon Bigelow, returnable according to law, enjoining and restraining the defendants, Frank R. Wolgast and Ralph Eldon Bigelow, and each of them and their respective attorneys, servants, agents, associates, workmen, employes and representatives and all claiming or holding under or through them as in this final decree set forth.

Enter Dec. 11, 1911.

KOHLSAAT,
Judge.

O. K.

W. F. Bigelow, Solicitor for Defendants.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Ringer, Wilhartz & Louer*, Chicago, Ill.; *Pam & Hurd*, Chicago, Ill., for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES OF AMERICA, FOR THE
NORTHERN DISTRICT OF
ILLINOIS, EASTERN
DIVISION

I, John H. R. Jamar, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of Final Decree made and entered in said Court on the 11th day of December, A. D. 1911, as fully as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 22nd day of August, A. D. 1922.

JOHN H. R. JAMAR, Clerk.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF ILLINOIS, NORTHERN
DIVISION

Tuesday, October 3, A. D. 1916

Present: HONORABLE J. OTIS HUMPHREY, Judge.

THE COCA-COLA COMPANY, Plaintiff,
v.
JAMES McMASTER and BONNIE H. DARGES,
Defendants.

This cause came on to be heard at this term and was argued by counsel and thereupon, upon consideration thereof and by stipulation and consent of all parties, it was *Ordered, Adjudged and Decreed* as follows, viz:

That the Court has jurisdiction of the subject matter and parties hereto.

That the defendants and each of them, their agents, servants, employees, successors and assigns, be and they each and all are *perpetually enjoined and restrained* from using or employing, in connection with the manufacture, advertisement, offering for sale or sale of any product not the plaintiff's, the word "Coca-Cola," or any like word, and from using or employing, in connection with the manufacture, advertisement, offering for sale or sale of any product not the plaintiff's, any bottle or other receptacle bearing

or containing in any way, the word "Coca-Cola," or any like word, and further from doing act act or thing, or using any name or names, bottles or receptacles, which may be calculated or likely to induce the belief that any product, not the plaintiff's is the product of the plaintiff, and that a Writ of Injunction issue to the above effect.

That the plaintiff waives an accounting of profits and damages in the premises, and that the plaintiff do have and recover from the defendants their costs and of this proceeding, to be taxed.

Dated October 3, 1916.

HUMPHREY, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; Reed & Rogers, Chicago, Illinois, For Plaintiff.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF FLORIDA

No. 37—EG. R. 25

THE COCA-COLA COMPANY

v.

ANTI-MONOPOLY DRUG STORE.

This cause coming on to be heard upon the motion of plaintiff for a temporary restraining order, and the defendant having filed his motion to dismiss the bill of complaint, and the same having been argued and submitted, it is *ordered, adjudged and decreed* that said motion to dismiss be and the same is hereby denied.

And said motion for a temporary restraining order upon the bill of complaint and the affidavits filed in support thereof, having been argued and submitted by counsel for respective parties,

It is *ordered, adjudged and decreed*, that the said defendant, Anti-Monopoly Drug Company, a corporation, its attorneys, officers, servants, agents, employes and representatives, be and each of them is hereby *restrained*, until the further order of this court, from infringing upon the trade-mark "Coca-Cola," and the trade rights of the complainant herein, and from substituting, passing off, or in any way permitting the passing off, of any product, when Coca-Cola is called for, that is not the product manufactured, made and sold by the complainants in this cause; and from applying to any syrup not manufactured by the complainant the name Coca-Cola; or from applying any

v. ANTI-MONOPOLY DRUG STORE.

other word or words that is a colorable imitation thereof; and from using any name, whether nickname or otherwise, sufficiently similar to the name Coca-Cola as applied to any drink so as to cause misrepresentation or deceit.

Done and ordered this 23rd day of June, 1914.

RHYDON M. CALL, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; R. A. Burford, Ocala, Florida, For Complainant.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

THE COCA-COLA COMPANY, Complainant,

v.

ANTI-MONOPOLY DRUG STORE, INC., Defendant.

FINAL DECREE.

Be It Remembered, That this cause came on for final hearing upon the testimony submitted, and upon the stipulation and agreement signed by counsel for the respective parties, and filed in said cause, and thereupon, after the due consideration,

It is ordered, adjudged and decreed, as follows, to wit:

1. That the equities of said cause are with the complainant, and that the temporary restraining order made in said cause on the 23rd day of June, A. D. 1914, whereby the said defendant, Anti-Monopoly Drug Store, Inc., a corporation, its attorneys, officers, servants, agents, employes and representatives, and each of them, were restrained from infringing upon the trade-mark "Coca-Cola," and the trade rights of the complainant herein; and from substituting, passing off, or in any way permitting the passing off, of any product when Coca-Cola is called for, that is not the product manufactured, made and sold by the complainant in this cause; and from applying to any syrup not manufactured by the complainant the name Coca-Cola; or from applying any word or words that is a colorable imitation thereof; and from using any name, whether nickname or otherwise, sufficiently similar to the name Coca-Cola as applied to any drink so as to cause misrepresentation or deceit, be and the same is hereby made permanent.

V. ANTI-MONOPOLY DRUG STORE.

2. *It is further ordered, adjudged and decreed,* that the said defendant pay the costs on this cause taxed by the clerk of this court at..... dollars, for which execution may issue in favor of said complainant, The Coca-Cola Company, a corporation, and against the said defendant, Anti-Monopoly Drug Store, Inc., a corporation under the laws of the State of Florida.

Done and ordered in open court at Ocala, Florida, on this the 22nd day of January, A. D. 1915.

(Signed) RHYDON M. CALL, Judge.

THE COCA-COLA COMPANY

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION

No. 4624—IN EQUITY

THE COCA-COLA COMPANY, Complainant,
v.
KRUMMENACHER DRUG COMPANY, Defendant.

FINAL DECREE.)

It appearing to the Court that the parties hereto having consented that the preliminary injunction heretofore ordered herein may be made perpetual.

It is *Ordered, Adjudged and Decreed* that the defendant, his agents, servants and employes and each of them be and they are hereby forever and *perpetually enjoined and restrained*:

(A) From selling and delivering in response to calls for Coca-Cola any beverage other than that made from the Coca-Cola syrup manufactured by complainant.

(B) From using any name sufficiently similar to Coca-Cola as to cause deceit.

(C) From selling or exposing for sale any beverage other than the product of complainant, having the peculiar and distinctive color and appearance of complainant's product, or any such approximation thereof, as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of any product as and for the product of complainant.

v. KRUMMENACHER DRUG COMPANY

It is *further adjudged* that the plaintiff have and recover of said defendant Krummenacher Drug Co. its costs herein, to be taxed by the clerk under the direction of the Court, and that execution issue therefor.

Dated at St. Louis, Mo., June 14, 1917.

DAVID P. DYER,
Judge.

The parties hereto hereby consent to the entry of the above and foregoing decree. The plaintiff waives profits and damages.

Candler, Thomson & Hirsch, James L. Hopkins,
Attorneys for Plaintiff.

J. M. Lashly, Howard G. Cook, Attorneys for Defendant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ILLINOIS, EASTERN DIVISION

September 24, 1917

No. 893

Present: HONORABLE GEORGE A. CARPENTER, District
Judge.

THE COCA-COLA COMPANY,

v.

M. THEODOSAKIS.

This cause coming on for further hearing and it appearing to the court that the defendant was duly served with process on the 12th day of July, 1917, and filed no answer to the bill of complaint, and that on the 22nd day of August, 1917, an order was entered taking the bill of complaint as confessed against the defendant, which said date is more than thirty (30) days before the entry of this decree, it is there-upon *Ordered, Adjudged and Decreed* as follows:

That the court had jurisdiction of the subject matter and of the parties to this suit; that the allegations of the bill of complaint are true and that the equities of the case are with the complainant and that complainant is entitled to the relief prayed, and accordingly, that the defendant, his agents, servants,

employees, attorneys and assigns, and all acting by or under his authority be, and they are each and all *perpetually enjoined and restrained* from selling, dispensing or supplying to customers or using, preparing, supplying or selling beverages to customers in response to requests for Coca-Cola or otherwise or plaintiff's product, any other product than the genuine Coca-Cola of plaintiff, and from doing any act or thing, or using any name, artifice or contrivance calculated to represent that any product not plaintiff's genuine Coca-Cola is said product, and that a writ of perpetual injunction issue accordingly.

That defendant pay the cost of this suit to be taxed, and that upon taxation plaintiff have execution thereof.

Enter. CARPENTER,
Judge.

Chicago, Illinois.
September 24, 1917.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Reed & Rogers, Chicago, Illinois,
For Complainants.

I, JOHN H. R. JAMAR, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 24th day of September, 1917, as fully as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 28th day of August, A. D. 1922.

(Signed) JOHN H. R. JAMAR, Clerk.

(Seal)

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

November 2, 1917

No. 929—IN EQUITY

Present: HONORABLE KENESAW M. LANDIS, District
Judge.

THE COCA-COLA COMPANY

v.

PETER MILLER.

This cause coming on for further hearing and it appearing to the court that the defendant was duly served with process on the 20th day of August, 1917, and filed no answer to the bill of complaint, and that on the 24th day of September, 1917, an order was entered taking the bill of complaint as confessed against the defendant, which said date is more than thirty (30) days before the entry of this decree, it is thereupon *ordered, adjudged and decreed* as follows:

That the court had jurisdiction of the subject-matter and of the parties to this suit; that the allegations of the bill of complaint are true and that the equities of the case are with the complainant and that complainant is entitled to the relief prayed, and, accordingly, that the defendant, his agents, servants, employes, attorneys and assigns, and all acting by or under his authority be, and they are each and all

perpetually enjoined and restrained from selling, dispensing or supplying to customers or using, preparing, supplying or selling beverages to customers in response to requests for Coca-Cola or otherwise for plaintiff's product, any other product than the genuine Coca-Cola of plaintiff, and from doing any act or thing, or using any name, artifice or contrivance calculated to represent that any product not plaintiff's genuine Coca-Cola is said product, and that a writ of perpetual injunction issue accordingly.

That defendant pay the cost of this suit to be taxed, and that upon taxation plaintiff have execution thereof.

(Signed) KENESAW M. LANDIS,
Judge.

Chicago, Illinois.
November, 1917.

Candler, Thomson & Hirsch, Atlanta, Ga.; Frank F. Reed, Edw. S. Rogers and Allen M. Reed, Chicago, Ill., for Complainant.

I, John H. R. Jamar, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of Decree made and entered in said Court on the 2nd day of November, 1917, as fully as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 25th day of August, A. D. 1922.

(Seal) (Signed) JOHN H. R. JAMAR,
Clerk.

THE COCA-COLA COMPANY

UNITED STATES OF AMERICA,
SOUTHEASTERN DIVISION OF THE EASTERN } ss.
JUDICIAL DISTRICT OF MISSOURI.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR SAID DIVISION
OF SAID DISTRICT

APRIL TERM, 1916
MONDAY, APRIL 10, 1916

No. 102—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

A. R. BEARD, Defendant.

ORDER OF PERMANENT INJUNCTION.

Now on this day come the parties hereto by their respective solicitors, and by consent of parties, the Court doth

Order, adjudge and decree that the defendant, A. R. Beard, his agents, servants and employes, and each of them, be *perpetually enjoined and restrained*:

1. From infringing upon the trade rights of the complainant in and to the trade-mark "Coca-Cola" as applied to the beverage described in the bill and from infringing upon the right of the complainant to be subjected to none but the fair competition in and about its manufacture and sale of the beverage known as "Coca-Cola", and from the further commission of the acts of substitution described in the bill.

2. From selling and delivering in response to requests or orders, written or verbal, for Coca-Cola, any beverage other than that made from the Coca-Cola syrup manufactured by the complainant.

3. From using, either verbally or by print or writing, any name sufficiently similar to the name "Coca-Cola", or any name applied to any drink, as to cause deceit of the consumer.

That as to paragraphs numbered 4 and 5 of the prayer for relief, no relief shall be granted.

(Signed) DAVID P. DYER,
Judge.

UNITED STATES OF AMERICA,
SOUTHEASTERN DIVISION OF THE EASTERN
JUDICIAL DISTRICT OF MISSOURI. } ss.

I, Jas. J. O'Connor, Clerk of the District Court of the United States, in and for the Southeastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a true copy of the final order of the court, in Case No. 102 of Coca-Cola Company, Complainant, v. A. R. Beard, Defendant, as fully as the same remain on file and of record in said case in my office.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said Court, at office in the City of Cape Girardeau in the Southeastern Division of said District, this 21st day of August, in the year of our Lord Nineteen Hundred and twenty-two.

JAS. J. O'CONNOR,
Clerk of said Court.

By JAS. F. GORDAN,
Deputy.

(Seal)

Candler, Thomson & Hirsch, Atlanta, Ga.; *James Love Hopkins*, St. Louis, Missouri; *H. E. Alexander*, Cape Girardeau, Mo.,
For Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ILLINOIS, EASTERN DIVISION

September 24, 1917

No. 892

Present: Honorable GEORGE A. CARPENTER, District
Judge.

THE COCA-COLA COMPANY

v.

N. POURLAKAS.

This cause coming on for further hearing and it appearing to the court that the defendant was duly served with process on the 10th day of July, 1917, and filed no answer to the bill of complaint, and that on the 22nd day of August, 1917, an order was entered taking the bill of complaint as confessed against the defendant, which said date is more than thirty (30) days before the entry of this decree, it is thereupon *ordered, adjudged and decreed* as follows:

That the Court has jurisdiction of the subject matter and of the parties to this suit; that the allegations of the bill of complaint are true and that the equities of the case are with the complainant and that complainant is entitled to the relief prayed, and, accordingly, that the defendant, his agents, servants, employees, attorneys and assigns, and all acting by or

under his authority, be, and they are each and all *perpetually enjoined and restrained* from selling, dispensing or supplying to customers or using, preparing, supplying or selling beverages to customers in response to requests for "Coca-Cola" or otherwise for plaintiff's product, any other product than the genuine Coca-Cola of plaintiff, and from doing any act or thing, or using any name, artifice or contrivance calculated to represent that any product not plaintiff's genuine Coca-Cola is said product, and that a writ of perpetual injunction issue accordingly.

That defendant pay the cost of this suit to be taxed, and that upon taxation plaintiff have execution therefor.

Enter:

Chicago, Illinois,
September 24, 1917.

CARPENTER,
Judge.

IN THE DISTRICT COURT OF THE UNITED STATES OF
AMERICA FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION.

I, John H. R. Jamar, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 24th day of September, A. D. 1917, as fully as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 28th day of August, A. D. 1922.

(Seal) JOHN H. R. JAMAR,
Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.; Reed & Rogers, Chicago, Illinois, for Complainant.

THE COCA-COLA COMPANY

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY

No. 2869—IN EQUITY

THE COCA-COLA COMPANY,
A Corporation Under the Laws of the State of
Georgia, Complainant,

v.

CHRIS. DORNA, SR., ELZIE WINTER, CLARENCE WINTER, LINCOLN COOK, MATT BARRY, MRS. WILLIAM BARRY, JAMES FARRELL and MRS. JAMES FARRELL, Defendants.

FINAL DECREE.

This cause came on to be heard at this term, and thereupon, upon consideration thereof, it was *ordered, adjudged and decreed* as follows, viz.:

That the defendants other than Chris. Dorna, Sr. (the complainant having dismissed the bill as against said Dorna before final hearing), namely, Elzie Winter, Clarence Winter, Lincoln Cook, Matt Barry, Mrs. William Barry, James Farrell and Mrs. James Farrell and each of them, their agents, servants, associates, employes or anyone acting or claiming by, through or under said defendants be and they are hereby *strictly enjoined, restrained and commanded to refrain*:

From in any way or manner selling or dispensing the drink and beverage known as Gay-Ola in place of the drink known as Coca-Cola.

From disposing of Gay-Ola of the same or substantially similar color to Coca-Cola, except when

the same is sold in bottles, receptacles or packages marked or labeled prominently with the name Gay-Ola, and designed and intended to be sold and delivered to the ultimate consumer in said original bottle, receptacle or package with said mark or label still remaining thereon.

The defendants may sell Gay-Ola as Gay-Ola in a long-necked clear glass bottle, having two annular ribs and two partially complete such ribs blown in the body of the bottle; and having the word "Gay-Ola" in large capital letters blown in the shoulder thereof and the words "The Improved Cola" in the body thereof; being also provided with a cap or crown on which the words "Gay-Ola, It's Better" are printed in red.

It is further ordered that the complainant recover its costs of the defendants.

(Signed) A. M. J. COCHRAN,
Judge.

April 9, 1914.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Paxton, Warrington & Seasongood, Cincinnati, O.,
for Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF TENNESSEE, NORTHERN
DIVISION

February 9, 1917

No. 17—IN EQUITY

THE COCA-COLA COMPANY

v.

JOHN F. HAUPT, JR.

FINAL DECREE.

This cause came on to be heard and finally determined before the HON. EDWARD T. SANFORD, Judge, on the pleadings and proof in the cause; upon consideration of which it is *ordered, adjudged and decreed* as follows:

1. That the plaintiff, The Coca-Cola Company, is a corporation organized, existing and doing business under the laws of the State of Georgia, and a citizen of said State within the meaning of the constitution and laws of the United States, and the defendant, John F. Haupt, Jr., is a citizen of the State of Tennessee and a resident of the City of Knoxville, in the Northern Division of the Eastern District of Tennessee.

2. That at the time of the institution of this suit and for a number of years prior thereto the plaintiff was engaged in the manufacture and sale of a syrup

used in compounding soft drinks, or soda fountain and bottled beverages, which syrup and the beverages made therefrom were known and sold under the name "Coca-Cola" and under that name were dispensed from soda fountains and in bottles throughout a large portion of the United States, and that a considerable trade therein had been established in the said City of Knoxville; that no other beverage has been sold throughout the United States under the name of Coca-Cola than that compounded from the syrup manufactured by the plaintiff, as aforesaid, and the exclusive right to the use of said name by the plaintiff has been acquiesced in by the trade, and the good will incident thereto is valuable.

3. That at and prior to the date of filing the bill the defendant has been maintaining unfair competition against the plaintiff by keeping in the soda fountain in his store a syrup or syrups resembling Coca-Cola, but not being the genuine Coca-Cola made by the plaintiff, which had been, under his direction, furnished by his employees to customers calling for Coca-Cola; and that plaintiff is entitled to an injunction against the continuance of such unfair competition and an accounting for the damages sustained on account thereof as prayed in the bill.

4. *It is therefore ordered, adjudged and decreed:*

(a) That the defendant be and he is hereby *enjoined and inhibited* from hereafter continuing such unfair competition by the substitution of other syrups for, or using other syrups instead of, the said Coca-Cola syrup manufactured and sold by the plaintiff, as aforesaid, in supplying customers calling for Coca-Cola.

(b) That the defendant pay all the costs of the cause, for which execution will issue.

(c) It being suggested that plaintiff may not desire to take a reference for the damages due it on account of the unfair competition of the defendant in

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the past, no order of reference will be entered at the present time, but such order may be taken hereafter on application of the plaintiff within thirty days from the date of the entry of this decree.

Approved for entry.

SANFORD, J.

O. K.

J. B. Sizer, For Plaintiff.

J. A. Fowler, For Defendant.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF TENNESSEE,
NORTHERN DIVISION. } ss.

I, Horace Van Deventer, Clerk of the United States District Court in and for the Eastern District of Tennessee, do hereby certify that the foregoing typewriting is a true, full, correct and complete copy of the original Writ of preliminary injunction *pendente lite*, and of the Final Decree, on file and remaining of record in my office in the cause of The Coca-Cola Co. v. John F. Haupt, Jr., No. 17 on the Equity Docket of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at Knoxville, Tennessee, this 22nd day of August, A. D. 1922.

HORACE VAN DEVENTER, Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.; *J. B. Sizer*, Chattanooga, Tenn., For Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF VIRGINIA

THE COCA-COLA COMPANY, Complainant,

v.

JAMES HABIB, doing business as HABIB CON-
FECTIONERY CO., Defendant.

This cause came on this day to be heard upon the Plaintiff's prayer for a temporary injunction, and the defendant having appeared by *Tazewell Taylor, Esq.*, his Counsel, and having admitted in open Court that this is a suit in which an order of injunction should be awarded against him, the said defendant; and the plaintiff thereupon having signified, by its attorney, *Robert W. Shultice, Esq.*, that it is willing to waive an accounting against the said defendant of the profits and damages alleged in said Bill of Complaint upon the granting of the injunction prayed for in the said Bill, and the plaintiff having thereupon amended its prayer for a temporary injunction and having prayed the Court to enter a permanent injunction herein, in accordance with the prayer of the said Bill of Complaint, to which motion for said permanent injunction the defendant having formally consented, the Court doth thereupon adjudge, order and decree that the said defendant, James Habib, doing business as Habib Confectionery Company, his agents, servants and employees, and each of them be *enjoined*:

First: From infringing upon the trade rights of the plaintiff, The Coca-Cola Company, and from the further commission of the acts of substitution alleged and described in the said Bill.

THE COCA-COLA COMPANY

Second: From selling and delivering, in response to requests or orders for Coca-Cola any beverage other than that made from Coca-Cola syrup manufactured by the plaintiff.

Third: From using any name sufficiently similar to the name Coca-Cola or any name applied to any drink, so as to cause deceit to the damage of the plaintiff.

Fourth: From selling any product that is the same color as Coca-Cola or any such approximation thereof, in such a manner and way as is likely to cause confusion and deception, or which might be calculated to induce the belief that the product is the product of the plaintiff.

The defendant and all of his associates, servants, clerks, agents, workmen and employees, and each and every person claiming under, by or through the said defendant, are hereby *perpetually enjoined and restrained* from doing any of the matters or things hereinabove prohibited to be done by this injunction order.

It is *further adjudged, ordered and decreed* that the defendant pay the costs of this suit, and that when the same are paid, that this cause be removed from the docket of this Court.

(Signed) EDMUND WADDILL, JR.,
U. S. District Judge.

Norfolk, Va., July 29, 1916.

A true copy *teste*:

JOSEPH P. BRADY, Clerk,
(By) R. P. FLANAGAN, Deputy Clerk.

Candler, Thomson & Hirsch, Atlanta, Georgia,
Robert W. Shultice, Norfolk, Va.,
For Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ALABAMA, SOUTHERN DIVISION

THE COCA-COLA COMPANY, Complainant,

v.

MAGIC CITY BOTTLING & SYRUP COMPANY,
et al., Respondents.

DECREE.

This cause coming on to be heard on the complainant's petition for a temporary writ of injunction against the respondents, and being submitted upon proof and argued by counsel for complainant and respondent, and decision reserved,

It is now *ordered, decreed and adjudged* by the Court that the complainant is entitled to the issuance of a temporary writ of injunction as prayed for.

It is further *ordered, decreed and adjudged* by the Court that the respondents, Magic City Bottling and Syrup Company, the Deacon-Brown Bottling Company, of Birmingham, Alabama, L. S. Meharg, G. M. Ray, Julius Marx, H. E. Marx, A. Tedesky and H. Mauck, and each of them or any of their associates, clerks, salesmen, servants, agents, workmen, attorneys and representatives, and all parties claiming or holding under or through said parties, be and they hereby are *enjoined* from using in any form whatsoever the name "Coca-Cola" or "Fletcher's Coca-Cola" as applied to any drink.

It is further *ordered, decreed and adjudged* by the Court that this injunction is temporary and is subject to the further orders of the Court.

It is further *ordered, decreed and adjudged* that the complainant be and it is hereby required, as a

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precedent to the issuance of said injunction, to execute a bond in the sum of Five Thousand Dollars (\$5,000.00) to the respondents herein, conditioned in accordance with law, in order to save said respondents harmless from damage that may be sustained by them by reason of the wrongful or improvident issuance of this injunction, said bond to be approved by the Clerk of this Court.

It is further *ordered, decreed and adjudged* that notice of this injunction shall be given said respondents and each of them either by personal service upon them or by service upon *Perkins Baxter* or *Samuel Stern*, their attorneys of record. All other matters reserved.

Ordered, Decreed and Adjudged this the 20th day of February, 1912.

W. I. GRUBB, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Percy, Benners & Burr*, Birmingham, Alabama, for Complainant.

IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION

No. 197—IN EQUITY

THE COCA-COLA COMPANY,

v.

A. J. HIEBER.

DECREE.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is *ordered, adjudged and decreed* that the defendant, A. J. Hieber, his agents, servants, clerks, attorneys, and all persons acting by or under his authority and direction, and all other persons to whom knowledge and notice of this order may come are *forever strictly enjoined* from directly or indirectly selling or attempting to sell to any person or persons asking for and desiring to purchase the beverage known as "Coca-Cola" manufactured and sold by the complainant any other beverage or substitute for said Coca-Cola without first advising such person or persons that the beverage actually sold by them is not Coca-Cola, and from substituting any other beverage for the said Coca-Cola without advising the purchaser thereof of said substitution and from selling any beverage other than Coca-Cola under any representation, direct or indirect, that the same is Coca-Cola.

THE COCA-COLA COMPANY

It is further *ordered, adjudged and decreed* that the complainant recover of the defendants its costs to be taxed, and execution may issue therefor.

(Signed) WILLIAM L. DAY, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; Chapman, Howland & Niman, Cleveland, O., for Plaintiff.

IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION

No. 197—IN EQUITY

THE COCA-COLA COMPANY

v.

R. WISE & J. L. McNEALY.

DECREE.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is *ordered, adjudged and decreed* that the defendants, R. Wise and J. L. McNealy, their agents, servants, clerks, attorneys, and all persons acting by or under their authority and direction, and all other persons to whom knowledge and notice of this order may come are *forever strictly enjoined* from directly or indirectly selling or attempting to sell to any person or persons asking for and desiring to purchase the beverage known as "Coca-Cola," manufactured and sold by the complainant and other beverage or substitute for said Coca-Cola without first advising such person or persons that the beverage actually sold by them is not Coca-Cola, and from substituting any other beverage for the said Coca-Cola without advising the purchaser thereof of said substitution and from selling any beverage other than Coca-Cola under any representation direct or indirect, that the same is Coca-Cola.

THE COCA-COLA COMPANY

It is further ordered, adjudged and decreed that the complainant recover of the defendants its costs to be taxed, and execution may issue therefor.

WILLIAM L. DAY, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; Chapman, Howland & Niman, Cleveland, Ohio, For Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHEASTERN
DIVISION OF THE EASTERN
JUDICIAL DISTRICT
OF MISSOURI

No. 120

ORDER FOR PRELIMINARY INJUNCTION

THE COCA-COLA COMPANY, Complainant,

v.

ROY M. STOKES and JOHN G. THOMPSON,
doing business as the MALDEN DRUG
COMPANY, Defendants.

Now this day the defendants herein having filed their answer in response to order to show cause heretofore issued herein, upon motion of the complainant by Harry E. Alexander, its counsel, and on consideration of the bill, the moving affidavits in behalf of the complainant, and said answer of defendants, the Court doth *order, adjudge and decree* that the defendants, Roy M. Stokes and John G. Thompson, doing business as the Malden Drug Company, their agents, servants and employes, and each of them, be *enjoined and restrained*, until further order of this Court:

1. From infringing upon the trade rights of the complainant in and to the trade-mark "Coca-Cola," as applied to the beverage described in the bill, and from infringing upon the right of the complainant to

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be subjected to none but fair competition in and about its manufacture and sale of the beverage known as "Coca-Cola," and from the further commission of the acts of substitution described in the bill;

2. From selling and delivering in response to requests or orders, written or verbal, for "Coca-Cola," any beverage other than that made from the "Coca-Cola" syrup manufactured by the complainant;

3. From using, either verbally or by print or writing, any name sufficiently similar to the name "Coca-Cola," or any name applied to any drink, as to cause deceit of the consumer;

4. From marketing a product of the same identical, or similar color, used by complainant in its product "Coca-Cola";

5. From selling, or exposing for sale, any beverage, other than complainant's product "Coca-Cola," having the peculiar and distinctive color and appearance of complainant's product, or any such approximation thereof as may be likely to deceive the public, without any such differentiation as will effectually prevent the passing off of a spurious product, as and for the product of complainant.

St. Louis, Missouri,
April 28, A. D. 1917.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHEASTERN
DIVISION OF THE EASTERN
JUDICIAL DISTRICT
OF MISSOURI

No. 120—INJUNCTION

THE COCA-COLA COMPANY, Complainant,

v.

ROY M. STOKES AND JOHN G. THOMPSON,
doing business as the MALDEN DRUG
COMPANY, Defendants.

Now, on this 11th day of October, 1917, this cause having come on to be heard upon the complaint and answer, and the proof taken therein, and the Court having duly considered the same and being fully advised doth thereon *order, adjudge and decree*, that the defendants, Roy M. Stokes and John G. Thompson, doing business as the Malden Drug Company, their agents, servants and employes, and each of them, be *perpetually enjoined and restrained*:

First: From infringing upon the trade rights of the complainant in and to the trade-mark "Coca-Cola," as applied to the beverage described in the bill, and from infringing upon the right of the complainant to be subjected to none but fair competition in and about its manufacture and sale of the beverage known as "Coca-Cola," and from the further commission of the acts of substitution described in the bill;

Second: From selling and delivering in response to requests or orders, written or verbal, for

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“Coca-Cola,” any beverage other than that made from the “Coca-Cola” syrup manufactured by the complainant;

Third: From using, either verbally or by print or writing, any name sufficiently similar to the name “Coca-Cola,” or any name applied to any drink, as to cause deceit of the consumer;

It is further ordered that paragraphs Four (4) and Five (5) of the preliminary order heretofore made in said cause, be eliminated from this decree without prejudice to complainant, that part of complainant’s bill not being passed upon by the Court.

It is further ordered that complainant have and recover of and from the defendants its costs and charges in this behalf expended, and thereof have execution.

*Candler, Thomson & Hirsch,*¹ Atlanta, Ga.; *Harry E. Alexander,* Cape Girardeau, Mo., For Complainant.

IN THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF
NORTH CAROLINA

THE COCA-COLA COMPANY, Complainant,

v.

L. G. FOX and L. G. FOX, doing business as
ELLERBEE DRUG COMPANY, ZOO
PHARMACY and FOX AND
LYON, Defendants.

• DECREE.

This cause coming on to be heard before his Honor, H. G. CONNOR, Judge, at New Bern, and it appearing that the parties have reached an agreement which agreement is set forth in a paper writing duly signed by them, dated September 20th, 1916, a copy of which is hereto attached and marked Exhibit "A", incorporated in and made a part of this decree;

It is thereupon, after due consideration, *adjudged, ordered and decreed* that the said agreement is hereby in all respects confirmed and made a decree of this court, and that the said defendants are hereby *perpetually enjoined and restrained* from doing or attempting to do any of the acts, things or matters which said defendants agreed not to do in said agreement; and the said defendants are hereby ordered to do all of those things, acts and matters which said defendants agreed to do in said agreement;

It is further *ordered, adjudged and decreed* that the costs of this action be equally divided between plaintiff Company and Defendants to be taxed by the Clerk.

E. G. CONNOR,
Judge Presiding.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF
NORTH CAROLINA

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

L. G. FOX and L. G. FOX, doing business as
ELLERBEE DRUG COMPANY, ZOO
PHARMACY and FOX AND
LYON, Defendants.

This Agreement, made and entered into this 20th of September, Nineteen Hundred and Sixteen, by and between The Coca-Cola Company, a corporation of the State of Georgia, County of Fulton, City of Atlanta, complainant in the above-stated cause, as party of the first part, and L. G. Fox as above, defendant in the above-stated cause, parties of the second part,

Witnesseth:

Whereas, the party of the first part, on the ... day of April, 1916, filed its bill of complaint in the above-styled Court against the parties of the second part, alleging infringement by parties of the second part of the trade-mark of party of the first part and unfair competition, the said bill of complaint being referred to as a part of this agreement and as setting out the grounds of complaint made by party of the first part against parties of the second part:

And Whereas, it is the desire of the parties to the said suit to settle the same;

Now, Therefore, in Consideration of the relinquishment of any claim party of the first part may have

against parties of the second part, or either of them, for damages on account of the matters and things alleged to said bill of complaint, parties of the second part agree that they and each of them, their clerks, servants, agents, workmen, employes and attorneys, and each and every person claiming under, by or through them, or in any way connected with their business, will not in any way or manner handle, sell or dispense any product for and as Coca-Cola that is not the product of the party of the first part, and will not sell or expose for sale any heverage other than the product of the party of the first part, Coca-Cola, having the same peculiar and distinctive appearance and color of said product of the party of the first part, or any such approximation thereof as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of a spurious product as and for the said product of party of the first part, and will not sell any product that is not Coca-Cola when Coca-Cola is called for, either by its proper name Coca-Cola or colorable imitation thereof or nicknames therefor, as for example Dope and Koke, unless the Courts should decree that they are not nicknames for Coca-Cola, or any name or designation commonly applied to the said product of the party of the first part and intended to designate the same; and will not use the said name Coca-Cola as applied to any product except the product of the Coca-Cola Company. Party of the second part recognizing that Coca-Cola is the valid trade-mark of the Coca-Cola Company.

It is further agreed that a decree may be entered in vacation of the Court or in term time in the said suit, setting out this agreement and confirming the same. Costs to be exactly shared by the parties hereto.

THE COCA-COLA COMPANY

In Witness Whereof, said parties have hereunto set their hands on the day and dates first above written.

THE COCA-COLA COMPANY,
By E. R. PRESTON and C. A. DUCKWORTH,
CANDLER, THOMSON & HIRSCH,
Attys. for Plaintiff.

L. G. Fox,
By W. R. JONES,
Atty. for Defendant.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
NORTH CAROLINA.

I, LEO D. HEARTT, Clerk of the United States District Court for the Eastern District of North Carolina, do hereby certify that the foregoing attached four (4) pages are a true and perfect copy of the Decree signed by Judge Connor, with agreement between parties attached thereto, as appears of record and on file in my said office, in the case of The Coca-Cola Company v. L. G. Fox *et al.*

In Testimony Whereof I have hereunto set my hand and affixed my official seal, this 27th day of October, 1916.

LEO D. HEARTT,
Clerk, U. S. Dist. Court.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF OHIO, EASTERN DIVISION

No. 195—IN EQUITY

THE COCA-COLA COMPANY

v.

F. H. EGGERS, JR.

This cause came on to be heard at this term and was argued by counsel and thereupon, upon consideration thereof, it is *ordered, adjudged and decreed* that the defendant, F. H. Eggers, Jr., his agents, servants, clerks, attorneys and all persons by or under his authority and direction and all other persons to whom knowledge and notice of this order may come are *forever strictly enjoined* from directly or indirectly selling or attempting to sell to any person or persons asking for and desiring to purchase the beverage known as "Coca-Cola," manufactured and sold by the complainant and other beverage or substitute for said Coca-Cola without first advising such person or persons that the beverage actually sold by them is not Coca-Cola, and from substituting any other beverage for the said Coca-Cola without advising the purchaser thereof of said substitution and from selling any beverage other than Coca-Cola under any representation direct or indirect, that the same is Coca-Cola.

It is *further ordered, adjudged and decreed* that the complainant recover of the defendants its costs to be taxed, and execution may issue therefore.

WILLIAM L. DAY, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Chapman, Howland & Niman*, Cleveland, Ohio, for Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

THE COCA-COLA COMPANY, Complainant,

v.

PHILIP MAZZONI and JOHN MAZZONI, Trading
and Doing Business as MAZZONI &
COMPANY, Defendants.

FINAL DECREE.

This case having been heard by the Court, and the Court being sufficiently advised, it is now *considered and adjudged* as follows:

That the defendants, Philip Mazzoni and John Mazzoni, trading and doing business as Mazzoni & Company, and each of them, their agents, servants and employees, and each of them, be, and they are hereby, *perpetually enjoined* from selling and delivering to any customer in response to requests or orders for Coca-Cola any beverage other than that made from Coca-Cola syrup, manufactured by the complainant and put upon the market under the name of Coca-Cola.

In all cases where Coca-Cola is asked for by intending purchasers or purchaser, the defendants, and each of them, their agents, servants and employees shall not serve to such customer or customers any other drink in lieu of Coca-Cola without first informing such intending purchaser or purchasers that the article offered for sale is not Coca-Cola, and defendants are enjoined from selling any other drink than Coca-Cola as and for Coca-Cola.

The parties hereto shall each pay their own costs herein, and there shall be no accounting.

v. PHILIP MAZZONI, *etc.*

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF KENTUCKY. } ss.

I, A. G. RONALD, Clerk of the District Court of the United States, for said Western District of Kentucky, do hereby certify the above and foregoing to be a true and complete copy of the Decree entered in said Court, on the 30th day of March, A. D. 1917, in the cause wherein Coca-Cola Company is the complainant, and Philip Mazzoni and John Mazzoni, trading, etc., are defendants, as the same appears from the original now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 30th day of March, A. D. 1917.

A. G. RONALD, Clerk,
By GEORGE W. RONALD, D. C.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Selligman & Selligman*, Louisville, Ky., for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIS-
TRICT OF KENTUCKY

THE COCA-COLA COMPANY, Complainant.

v.

JOE DISCH, doing business as the DIAMOND CAFE,
Defendant.

DECREE.

This case having been heard by the Court and the Court being sufficiently advised, it is now *considered and adjudged* as follows:

That the defendant, Joe Disch, doing business as the Diamond Cafe, his agents, servants and employes, and each of them, be, and they are hereby *perpetually enjoined* from selling and delivering to any customers in response to requests or orders for Coca-Cola, any beverage other than that made from Coca-Cola syrup, manufactured by the complainant, and put upon the market under the name of Coca-Cola.

In all cases where Coca-Cola is asked for by intending purchasers or purchaser, the defendant, his agents, servants and employes, shall not serve to such customer or customers any other drink in lieu of Coca-Cola without first informing such intending purchaser or purchasers that the article offered for sale is not Coca-Cola, and defendant is enjoined from selling any other drink than Coca-Cola as and for Coca-Cola.

The parties hereto shall each pay their own costs herein, and there shall be no accounting.

WALTER EVANS, Judge.

*Candler, Thomson & Hirsch, Atlanta, Georgia;
Selligman & Selligman, Louisville, Ky., For Com-
plainant.*

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIS-
TRICT OF VIRGINIA

No. 719

THE COCA-COLA COMPANY

v.

COEBURN DRUG COMPANY, Inc.

This cause came on to be heard this day in vacation of this court, on the Bill of Complaint and affidavits filed therewith; on *subpoena ad respondendum* duly executed as to defendant, and particularly upon an agreement between plaintiff and defendant settling the issues involved in this suit, which agreement is filed with the papers in this cause, marked exhibit "Agreement," and was argued by counsel.

Upon consideration whereof and in conformity with the written agreement referred to between plaintiff and defendant, it is *adjudged, ordered and decreed* that defendant, its agents, servants and employes, and each of them, be hereby *enjoined perpetually*—

(1) From infringing upon the trade rights of plaintiff and from the further commission of the acts of substitution described in the Bill of Complaint.

(2) From selling and delivering, in response to requests or orders for Coca-Cola any beverage other than that made from the Coca-Cola syrup manufactured by your plaintiff.

(3) From using any name sufficiently similar to the name Coca-Cola, or any name applied to any drink, as to cause deceit.

THE COCA-COLA COMPANY

(4) From marketing a product of the same identical or similar color as that used by plaintiff in its product Coca-Cola for purposes of deceit.

(5) From selling or exposing for sale any beverage other than plaintiff's product Coca-Cola having the peculiar and distinctive color and appearance of plaintiff's product, or any such approximation thereof as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of a spurious product as and for the product of plaintiff.

It is further *adjudged, ordered and decreed* that this cause be *dismissed* at the cost of the defendant.

H. C. McDOWELL, Judge.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Peters & Lavinder, Bristol, Virginia, For Complainant.

This Agreement, made and entered into this the 29th day of May, 1916, between Coca-Cola Company, party of the first part, and Coeburn Drug Company, Inc., party of the second part,

Witnesseth:

That Whereas, there is now pending in the District Court of the United States for the Western District of Virginia, at Abingdon, Virginia, a suit in which the party of the first part is plaintiff and the party of the second part is defendant; and

Whereas, said second party is willing to refrain from the further commission of the acts complained of in said suit and all matters between said parties in said suit having been settled,

Now, Therefore, It is Agreed, That the said second party binds itself, its agents, representatives and employes to refrain from the sale, distribution or use of any drink as "Coca-Cola" other than the Coca-Cola

manufactured and sold by said first party, and to refrain from any and all other acts complained of in the bill in this cause.

It is further agreed that the court, either in vacation or in term time, may enter a decree in said cause permanently enjoining said second party from the sale, distribution or use of any drink as "Coca-Cola" other than the product of said first party, and granting all other relief prayed for in the bill of complaint in said cause, except that no damages are to be assessed against said party of the second part, defendant in said suit, and said decree further dismissing said cause at the cost of defendant therein.

In Witness Whereof, the said parties of the first part and second parts have placed hereunto their hands and seals this the day and year first above written.

COCA-COLA COMPANY (Seal.)

By CHAS. H. CANDLER,
President.

COEBURN DRUG COMPANY, INC. (Seal.)

By.....,
President.

Attest:

W. A. BANNER,
Secretary Coeburn Drug Co., Inc.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES, EASTERN DISTRICT OF MIS-
SOURI, EASTERN DIVISION

No. 4475—IN EQUITY

THE COCA-COLA COMPANY, and ST. LOUIS
COCA-COLA BOTTLING COMPANY,
Plaintiffs,

v.

ISRAEL SHUCART and JACOB SHUCART,
Defendants.

FINAL DECREE.

Now this day, this cause having come on to be heard upon final hearing and the Court having considered the pleadings and proofs herein, upon such consideration the Court doth

Order, Adjudge and Decree that the defendants, Israel Shucart and Jacob Shucart, their agents, servants and employes and each of them be, and they are hereby forever and *perpetually enjoined* and *restrained* from infringing upon the trade-mark Coca-Cola, as the same has been registered in the United States Patent Office by the plaintiff, The Coca-Cola Company, and as the same is used upon bottles and wooden cases by the plaintiff, St. Louis Coca-Cola Bottling Company, and from infringing upon the trade rights of the plaintiffs by purchasing or otherwise acquiring any of the bottles or wooden cases described in the bill and bearing the trade-mark Coca-Cola aforesaid, and from taking the same into their possession, and from making any use or disposition

of any of such bottles or cases which may now be in their possession or under their control, and from making, selling, keeping on hand for sale or offering for sale or in any manner dealing in any beverage made in imitation or simulation of the color, odor or taste of the beverage known as Coca-Cola and sold by the plaintiffs under and by means of the said trademark Coca-Cola, and from selling or offering for sale any beverage whatsoever with the verbal or written suggestion that it may be substituted by the dealer on calls or order for Coca-Cola;

It is Further Ordered that the said defendants, Israel Shucart and Jacob Shucart, deliver up to the Marshal of this Court all of the above described receptacles, namely: bottles having the trade-mark Coca-Cola blown therein or otherwise affixed thereto, and wooden cases having the name Coca-Cola imprinted thereon, now in the possession or under the control of them or either of them.

And the Court doth further refer the cause to Theodorick R. Bland, as Special Master in Chancery herein, to take, state and report to the Court an account of the profits realized by the defendants from their infringing acts in the premises, and to assess such damages in the premises as may be proper; and the said Master is authorized to direct and require the said defendants to file with him an account of such matters in the form of debtor and creditor, and to compel the production before him of such books and papers as may be necessary in the premises, and to compel the appearance before him of such witnesses as may be required for the giving of needful and proper testimony upon said issues.

It Is Further Ordered that the plaintiffs have and recover from the defendants their costs herein up to and including the entry of this decree, to be taxed by the Clerk under the direction of the Court, and that execution issue therefor.

THE COCA-COLA COMPANY

Dated at St. Louis, Missouri, this 10th day of June, 1916.

(Signed) DAVID P. DYER, Judge.

Candler, Thomson & Hirsch, Atlanta, Georgia;
James Love Hopkins, St. Louis, Missouri, for Plaintiffs.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE EASTERN
DISTRICT OF TEXAS, AT TYLER

THE COCA-COLA COMPANY, Complainant,

v.

J. L. MEYER, doing business as CROWN BOT-
TLING WORKS, Defendant.

It is hereby decreed by and between the plaintiff and defendant in the above-styled cause that on the hearing of the application for injunction herein at Jefferson, Texas, on the 7th day of October, 1912, a temporary injunction may be granted enjoining and restraining the defendant, his agents, employees and attorneys in fact, under the name of the Crown Bottling Works, or any other name, from using its labels or crowns or any crowns, labels or bottles on his product or on any product similar to that manufactured by The Coca-Cola Company, plaintiff herein, in such way as to deceive the public and consumers of such product or products, and cause them to believe that they are the products of complainant, and that the said defendant, Meyer, his employees, servants, and attorneys in fact shall be *temporarily enjoined* from making any use of any kind of product similar to the product usually known as Coca-Cola, and selling it as Coca-Cola, and that this temporary injunction shall be thereafter in due course, and without further notice to us or appearance by us, made *perpetual*.

It is further agreed that the plaintiff herein shall pay the cost of filing the bill, and that the defendant shall pay the cost of service of notice.

It is further agreed that service of subpoena usually required is hereby waived by the defendant,

THE COCA-COLA COMPANY

and service accepted, and formal appearance hereby entered.

(Signed) J. L. MEYER.

J. L. MEYER,

Doing business as Crown Bottling
Works.

Candler, Thomson & Hirsch, Atlanta, Ga.; Crane & Crane, Dallas, Texas; H. O. Head, Sherman, Texas, for Plaintiff.

IN THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF TEXAS

No. 28—EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

D. M. HUDSPETH, Defendant.

On this the 10th day of November, 1916, it being made to appear to the Court that the parties in the above styled and numbered cause have heretofore on, to-wit: the 10th day of August, 1916, in writing entered into stipulations filed in the court for the disposition of all matters in controversy therein, and in accordance with said stipulations filed, it is hereby *decreed* by the Court that the defendant, D. M. Hudspeth, doing business as and under the name of Mt. Pleasant Bottling Works, his associates, salesmen, clerks, workmen and employees, and all and every person claiming or holding under or through said defendant, or in any way connected with his business be and they are hereby *perpetually enjoined and restrained* from in any way or manner selling a product in any such way as to pass off the same as and for the product of the complainant, and in using in any form whatsoever the name "Coca-Cola" as applied to any drink as to cause deceit and from any other act in the premises in any manner or form calculated to deceive and *further restraining and enjoining* the defendant, his associates, salesmen, clerks, employees and all persons claiming or holding under or through said defendant that they be and are hereby *perpetually*

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enjoined and restrained from in any manner using the name "Coca-Cola" upon any labels, printed or lithographed matter, or upon crowns, corks or bottles used for selling drinks, and from in any way or form whatsoever using same as applied to any drink, or from any other act in any manner or form calculated to deceive.

It further appearing to the Court that besides the stipulations plaintiff has expressly waived all other relief prayed for, it is further *ordered and decreed* that no damages be recovered against the defendant except that it is hereby *ordered, adjudged and decreed* by the Court that plaintiff do have and recover of and from the defendant all costs in this behalf incurred, for which execution may issue.

(Signed), GORDON RUSSELL,
Judge.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Crane & Crane, Dallas, Texas; *H. O. Head*, Sherman,
Texas, for Complainant.

UNITED STATES OF AMERICA, }
FIFTH CIRCUIT, } ss.
EASTERN DISTRICT OF TEXAS. }

I, J. R. BLADES, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify the foregoing pages from 1 to 2, inclusive, to be a true and correct copy of the Judgment, in Cause No. 28, on the Equity Docket of said court, entitled *The Coca-Cola Company, Complainants, v. D. M. Hudspeth*, doing business as *Mt. Pleasant Bottling Works*, Defendant, as fully as the same now appears on file in my office at Texarkana, Texas.

To Certify Which, witness my official hand and the seal of said court at Texarkana, Texas, in said District, this the 18th of September, A. D. 1922.

J. R. BLADES,
Clerk U. S. District Court, E. D. T.
(Seal) By W. R. CHALKER, Deputy.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE NORTHERN
DISTRICT OF TEXAS, AT DALLAS

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

THE EMPIRE BOTTLING AND
MANUFACTURING COMPANY, Defendant.

On this the 24th day of February, A. D. 1917, the above styled and numbered cause came on to be heard on the Bill and Answer, Exhibits and Evidence, and the Court, after hearing the same and argument of counsel thereon, is of the opinion that the Complainant is entitled to the relief prayed for.

It is, therefore, *ordered, adjudged and decreed* by the Court, that the defendant, Empire Bottling and Manufacturing Company, and all of its associates, salesmen, servants, clerks, agents, workmen, employes, and every person claiming or holding under or through the said defendant, or in any way connected with the business aforesaid be, and they are hereby *perpetually enjoined and restrained* from in any way or manner making or selling its product in such way as to pass off the same as and for the product of the complainant, The Coca-Cola Company, and from using in any form whatsoever the name Coca-Cola as applied to any drink manufactured and sold by it, or from using any name sufficiently similar to the name Coca-Cola as applied to any drink or beverage manufactured and sold by it as to cause

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deceit and from any other act in the premises in any manner or form calculated to deceive, that the defendant and its associates, salesmen, servants, clerks and employes, and all persons claiming or holding under or through the said defendant, Empire Bottling and Manufacturing Company, be and the same are hereby *perpetually enjoined and restrained* from in any way or manner using the name Coca-Cola upon any label or labels or other printed or lithographed matter, or upon crowns or corks or bottles used for selling drinks, or from in any way or form whatsoever using the name as applied to any drink or beverage manufactured and sold by the defendant, and from any other act in any manner or form calculated to deceive.

It is further *ordered, adjudged and decreed* by the Court, that the complainant, The Coca-Cola Company, have the sole and exclusive right to the use of the trade-mark or name "Coco-Cola" in connection with a drink or beverage, and that the defendant, Empire Bottling and Manufacturing Company, be in all things restrained from its use upon any other bottled drink or beverage except the Coca-Cola manufactured and bottled under the directions of the complainant.

It is further *adjudged and decreed* by the Court that the complainant do have and recover of and from the defendant, Empire Bottling and Manufacturing Company, all costs in this behalf expended, for which it may have its execution.

E. R. MEEKS,
Judge.

Candler, Thomson & Hirsch, Atlanta, Georgia,
M. M. Crane, Dallas, Texas,
for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIS-
TRICT OF KENTUCKY

IN EQUITY

APPLICATION FOR INJUNCTION

THE COCA-COLA COMPANY, Complainant,
v.
SEELBACH HOTEL COMPANY, Defendant.

DECREE.

The Complainant, The Coca-Cola Company, and the defendant, the Seelbach Hotel Company, having stipulated that the verified allegations of the bill of complaint may be taken as true, and this action having been submitted in chief, and the Court being sufficiently advised, it is *considered, ordered and decreed*—

(a) That the defendant, Seelbach Hotel Company, its agents, servants and employees, and each of them, be, and they are hereby, *enjoined*

(1) From infringing upon the trade rights of the Coca-Cola Company, as in the complaint described, and from the further commission of the acts of substitution as therein described.

(2) From selling and delivering in response to requests or orders for Coca-Cola, any beverage other than that made from the Coca-Cola Syrup manufactured by the complainant.

THE COCA-COLA COMPANY

(3) From using any name sufficiently similar to the name of Coca-Cola, or any name applied to any drink as to cause deceit.

(4) From selling or exposing for sale any beverage simulating the product Coca-Cola without such differentiation as will effectually prevent the passing off of a spurious product as and for Coca-Cola, the product of the complainant.

(b) No accounting of profits or damages in the premises is required of the defendant.

(c) The defendant will pay the costs of this action.

(d) This action is reserved for such further and other orders and proceedings as hereafter may be necessary to uphold and enforce this decree.

(Signed) WALTER EVANS, Judge.

Seen and Approved:

THE COCA-COLA COMPANY,

*Candler, Thomson & Hirsch,
and Selligman & Selligman,*

Its Attorneys.

SEELBACH HOTEL COMPANY,

by Kohn, Bingham, Sloss & Spindle,

Attorneys.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF TEXAS

No. 57—IN EQUITY

THE COCA-COLA COMPANY

v.

RAY FITCH.

It being made to appear to the court that the parties hereto have entered into the following stipulations, to wit:

It is hereby stipulated by and between the parties, plaintiff and defendant, in the above styled cause, that the plaintiff may have its decree against the defendant, as prayed for, with the exception that no decree will be entered as an appearance and to fully authorize the decree above mentioned to be entered in favor of plaintiff and against the defendant.

It is, therefore, *ordered, adjudged and decreed* by the court that the defendant, Ray Fitch, his agents, servants, employes, successors and assigns, and each and all of them be and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertising, offering for sale or selling any beverage with the words "Coca-Cola," or any like word or words, whether alone or in connection with other words or names, and further from doing any act or thing, or using any name or names, contrivance, artifice, or device, which may be calculated to lead or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola.

THE COCA-COLA COMPANY

It is further *ordered, adjudged and decreed* by the court that the plaintiff pay all costs of court, for which the officers of this court may have their execution.

GORDON RUSSELL, Judge.

Sherman, Texas. January 16th, 1919.

Candler, Thomson & Hirsch, Atlanta, Georgia,
Crane & Crane, Dallas, Texas,
H. O. Head, Sherman, Texas,
for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF TEXAS

No. 58—IN EQUITY

THE COCA-COLA COMPANY

v.

J. N. RAYZOR AND J. FRED RAYZOR,
Partners operating as ALLIANCE ICE CO.

It being made to appear to the court that the parties hereto have entered into the following stipulations, to wit:

It is hereby stipulated by and between the parties, plaintiff and defendants, in the above styled cause, that the plaintiff may have its decree against the defendants as prayed for, with the exception that no decree will be entered for damages. This stipulation will be treated as an appearance and to fully authorize the decree above mentioned to be entered in favor of plaintiff and against defendants.

It is therefore *ordered, adjudged and decreed* by the Court that the defendants, J. N. Rayzor and J. Fred Rayzor, partners operating as Alliance Ice Company, their agents, servants, employes, successors and assigns, and each of them and all be, and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertising, offering for sale, or selling any beverage, with the words, "Coca-Cola" or any like words or names, and further from doing any act or thing, or using any name or names, contrivances, artifices, or device,

THE COCA-COLA COMPANY

which may be calculated to lead or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola.

It is further *ordered, adjudged and decreed* by the court that the plaintiff pay all costs of court, for which the officers of this court may have their execution.

GORDON RUSSELL, Judge.

Sherman, Texas. January 16th, 1919.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Crane & Crane, Dallas, Texas,
H. O. Head, Sherman, Texas,
for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF TEXAS

No. 59—IN EQUITY

THE COCA-COLA COMPANY

v.

P. W. HOGAN.

It being made to appear to the Court that the parties hereto have entered into the following stipulations, to wit:

It is hereby stipulated by and between the parties, plaintiff and defendant, in the above styled cause, that the plaintiff may have its decree against the defendant as prayed for, with the exception that no decree will be entered for damages, and that plaintiff will pay all costs.

This stipulation will be treated as an appearance and to fully authorize the decree above mentioned to be entered in favor of plaintiff and against the defendant.

It is therefore, *ordered, adjudged and decreed* by the Court that the defendant, P. W. Hogan, his agents, servants, employes, successors and assigns and each and all of them be, and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertising, offering for sale, or selling any beverage with the words, "Coca-Cola" or any like word or words, whether alone or in connection with other words or names, and further from doing any act or thing, or using any

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name or names, contrivances, artifices, or device, which may be calculated to lead or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola.

It is further *ordered, adjudged and decreed* by the Court that the plaintiff pay all costs of Court, for which the officers of this Court may have their execution.

W. R. SMITH,
Presiding Judge.

Sherman, Texas. February 13th, 1919.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Crane & Crane, Dallas, Texas,
H. O. Head, Sherman, Texas,
for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF TEXAS

No. 56—EQUITY

THE COCA-COLA COMPANY

v.

ISAAC ROCHSTEIN, doing business
as CITY BOTTLING WORKS.

It being made to appear to the court that the parties hereto have entered into the following stipulations, to wit:

It is hereby stipulated by and between the parties, plaintiff and defendant, in the above styled cause, that the plaintiff may have its decree against the defendant as prayed for, with the exception that no decree will be entered for damages. This stipulation will be treated as an appearance and to fully authorize the decree above mentioned to be entered in favor of plaintiff and against the defendants.

It is therefore, *ordered, adjudged and decreed* by the court that the defendant, Isaac Rochstein, doing business as City Bottling Works, his agents, servants, employes, successors and assigns, and each and all of them be, and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertising, offering for sale, or selling any beverages with the words, "Coca-Cola" or any like words or names, and further from doing any act or thing, or using any names or name, contrivances, artifices, or devices which may be calculated to lead

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or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola.

It is further *ordered, adjudged and decreed* by the Court that the plaintiff pay all costs of court, for which the officers of this court may have their execution.

GORDON RUSSELL, Judge.

Sherman, Texas. January 16th, 1919.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Crane & Crane, Dallas, Texas,
H. O. Head, Sherman, Texas,
for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF TEXAS

No. 55—IN EQUITY

THE COCA-COLA COMPANY

v.

J. T. CLARK AND THEODORE WINNINGHAM,
doing business as RED RIVER MFG. AND
BOTTLING COMPANY.

It being made to appear to the court that the parties hereto have entered into the following stipulations, to wit:

It is hereby stipulated by and between the parties, plaintiff and defendants, in the above styled cause, that the plaintiff may have its decree against the defendants as prayed for, with the exception that no decree will be entered for damages. This stipulation will be treated as an appearance and to fully authorize the decree above mentioned to be entered in favor of plaintiff and against the defendant.

It is therefore *ordered, adjudged and decreed* by the court that the defendants, J. T. Clark and Theodore Winningham, doing business as Red River Mfg. & Bottling Company, their agents, servants, employes, successors and assigns, and each and all of them be, and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertising, offering for sale, or selling any beverage with the words, "Coca-Cola," or any like word or words, whether alone or in connection with other words or names, and further from doing any act or

THE COCA-COLA COMPANY

thing, or using any name or names, contrivance, artifice or device, which may be calculated to lead or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola.

It is further *adjudged and decreed* by the court, that the plaintiff pay all costs of court, for which the officers of this court may have their execution.

GORDON RUSSELL, Judge.

Sherman, Texas. January 16th, 1919.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Crane & Crane, Dallas, Texas,
H. O. Head, Sherman, Texas,
For Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF TEXAS

No. 54—IN EQUITY

THE COCA-COLA COMPANY

v.

A. F. CAMERON.

It being made to appear to the court that the parties hereto have entered into the following stipulations, to wit:

It is hereby stipulated by and between the parties, plaintiff and defendant, in the above styled cause, that the plaintiff may have its decree against the defendant as prayed for, with the exception that no decree will be entered for damages. This stipulation will be treated as an appearance and to fully authorize the decree above mentioned to be entered in favor of plaintiff and against the defendant.

It is therefore *ordered, adjudged and decreed* by the court that the defendant, A. F. Cameron, his agents, employes, successors and assigns and each of them be, and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertising, offering for sale, or selling any beverage with the words "Coca-Cola" or any like word or words or names, and further from doing any act or thing, or using any name or names, contrivance, artifice or device, which may be calculated to lead or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola.

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It is further *ordered, adjudged and decreed* by the court that the plaintiff pay all costs of court, for which the officers of this court may have their execution.

GORDON RUSSELL, Judge.

Sherman, Texas. January 16th, 1919.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Crane & Crane, Dallas, Texas,
H. O. Head, Sherman, Texas,
For Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF MICHIGAN, SOUTHERN DIVISION

No. 27—IN EQUITY

THE COCA-COLA COMPANY
v.
DETROIT BASEBALL COMPANY.

Now this day, the parties hereto consenting thereunto, the Court *doth order, adjudge, and decree* that the defendant Detroit Baseball Company, its agents, servants and employes, and each of them be, and they are hereby forever and *perpetually enjoined and restrained* from selling and delivering to any person, in response to orders for "Coca-Cola" (said words being the Complainant's trade-mark, and registered by it in the United States Patent Office, certificate No. 22,406 of January 31st, 1893, and certificate No. 47,189 of October 31st, 1905) any other beverage than that made by the complainant, The Coca-Cola Company.

Further ordered that Defendant pay the costs herein to be taxed by the Clerk under the direction of the Court and that execution issue therefor.

Dated, Detroit, Michigan.

August 19th, 1913.

(Sd) C. W. SESSIONS,
District Judge, Sitting by Designation.

The parties hereto stipulate and agree that the foregoing and final decree may be entered herein.

Candler, Thomson & Hirsch,
Geo. B. Jerkes, J. L. Hopkins,
Attorneys for Complainants.

Corliss, Leete & Moody,
Attorneys for Defendant.

THE DISTRICT COURT OF THE UNITED
STATES, EASTERN DISTRICT
OF MICHIGAN

No. 25—IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

CHARLES W. McCORMICK and
JOHN MARKLEIN, Defendants.

Now this day, the parties hereto consenting thereunto, the Court *doth order, adjudge and decree* that the defendants Charles W. McCormick and John Marklein, their agents, servants and employes, and each of them be, and they are hereby forever and *perpetually enjoined and restrained* from selling and delivering to any person, in response to orders for Coca-Cola (said words being complainant's trademark, and registered by it in the United States Patent Office, certificate No. 22,406 of Jan. 31st, 1893, and certificate No. 47,189 of Oct. 31st, 1905) any other beverage than that made by the complainant, The Coca-Cola Co.

Further ordered that Defendants pay the costs herein to be taxed by the Clerk under the direction of the Court and that execution issue therefor.

C. E. SESSIONS,

District Judge, Sitting by Designation.

The parties hereto stipulate and agree that the foregoing and final decree may be entered herein.

Candler, Thomson & Hirsch,
Geo. B. Yerkes, J. L. Hopkins,
Attorneys for Complainant.
A. J. Groesbeck,
Attorney for Defendants.

Filed August 19th, 1913,

ELMER W. VOORHEIS, Clerk,

By CARRIE DAVISON, Deputy Clerk.

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE EASTERN
DISTRICT OF MICHIGAN

Present: The HONORABLE ARTHUR J. TUTTLE, United
States District Judge.

No. 40

THE COCA-COLA COMPANY, Plaintiff,

v.

EDWARD McBRIDE, *et al.*, Defendants.

Now this day, this cause coming on to be heard upon the exceptions of the plaintiff to the report of the Master herein, upon consideration of said exceptions and the arguments of counsel thereon, the Court being duly advised doth

Order, adjudge and decree as follows:

1. That said exceptions be *sustained*.
2. That The Coca-Cola Company, plaintiff herein, a corporation organized, existing and doing business under the laws of the State of Georgia, has been engaged since the year 1892 in the manufacture and sale of a certain beverage known as and by the trade-mark consisting of the compound word Coca-Cola.
3. That said trade-mark was registered by said plaintiff in the Patent Office of the United States on January 31st, 1893, by certificate No. 22,406, and on October 31, 1905, by certificate No. 47,189, and is the property of the said plaintiff.
- 3½. That said trade-mark has not been infringed by defendants.

4. That the plaintiff has expended large sums of money in advertising the said beverage under the

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said trade-mark and has built up a large trade between the State of Georgia and each of the other states of the United States, and the good will of such trade and the said trade-mark is each of a value in excess of Three Thousand (\$3000) Dollars, exclusive of interest and costs.

5. That said beverage made by plaintiff and designated by said trade-mark "Coca-Cola" is of a distinctive and nonfunctional color, by which color it is known to the trade and consumers.

6. That prior to the filing of the Bill of Complaint herein the defendants did, within the jurisdiction of this court, prepare for sale and sell a beverage colored in imitation of plaintiff's above-described beverage and similar thereto in taste, said defendants vending the same in bottles similar in general form and appearance to the bottles in which plaintiff's "Coca-Cola" had been and was being sold, and that said bottles so used by defendants were not marked or branded in any way and were provided with metallic caps also not marked or branded; which said acts of the defendants constituted unfair and unlawful competition with the plaintiff.

7. That by their said acts the defendants have diverted to themselves profits to which the plaintiff was entitled, and have occasioned loss and damages to the plaintiff.

8. That the defendants Edward McBride, Charles M. Earl, and Daniel J. Pollard, their agents, servants and employees and each of them be, and they are hereby, *forever and perpetually enjoined and restrained* from the further commission of the acts hereinbefore described, and from passing off any spurious beverage or syrup as and for the "Coca-Cola" of the plaintiff, and from employing any trick, artifice or device by way of passing off any spurious article as and for the "Coca-Cola" of the plaintiff, and from instituting, carrying on or instigating any unfair competition with the plaintiff in

relation to the plaintiff's established trade and good will in its said product "Coca-Cola."

9. That this cause be, and it is hereby referred to William S. Sayres, Jr., Standing Master of this Court, to take, state and report to the Court an account of the profits and damages herein, with the usual power in said Master to compel the attendance of witnesses, the production of books and papers, and the making by defendants of an account in the form of debtor and creditor.

10. That the plaintiff have and recover of defendants its costs herein up to the time of this decree, to be taxed by the Clerk under the direction of the Court, and that execution issue therefor.

Candler, Thomson & Hirsch, Atlanta, Georgia,
James Love Hopkins, St. Louis, Missouri,
For Plaintiff.

UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF MICHIGAN. } ss.

I, ELMER W. VOORHEIS, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Final Decree in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at Detroit, in said District, this 24th day of August, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States of America the one hundred and forty-seventh.

(Sd) ELMER W. VOORHEIS, Clerk.

By CARRIE DAVISON, Deputy Clerk.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DIS-
TRICT OF VIRGINIA

IN EQUITY

THE COCA-COLA COMPANY, a corporation duly organized and existing under the laws of the State of Georgia, and having its principal place of business in the City of Atlanta, State of Georgia, Complainant,

v.)

STROLE DRUG COMPANY, INCORPORATED, a corporation duly organized and existing under the laws of the State of Virginia and having its principal place of business in the City of Norfolk, State of Virginia, and J. LOROM STROLE, Defendants.

On motion of the plaintiff by Counsel, and with the consent of the defendants, given by their Solicitors in Open Court, this cause is reinstated upon the docket of the Court, less than a year having elapsed since it was dropped from the trial calendar.

On motion of the plaintiff by Counsel, which motion was consented to by Bowden & Heard, Counsel for J. Lorom Strole in open Court, leave is given the plaintiff to amend its Bill of Complaint, by making the said Lorom Strole a party defendant to said Bill, and such leave being granted, the Bill was thereupon amended, and the said J. Lorom Strole was made a party defendant.

And thereupon, this cause came on this day to be heard upon the complainant's Bill of Complaint filed in this Court at Norfolk, Virginia, on the 30th day of July, 1913, which Bill is duly sworn to by Charles H. Candler, and which has been amended as aforesaid.

And the court having carefully considered the matters set out in said Bill, and the prayer of the complainant for a permanent injunction as hereinafter set out.

And the defendant Strole Drug Company, Inc., by its Solicitors of Record having, upon leave given it, which leave was concurred in by J. Lorom Strole, by counsel, withdrawn the motion to dismiss, heretofore filed in these proceedings and the two defendants having signified that they do not desire to answer or otherwise plead to the complainant's Bill, the Court, on motion, doth thereupon *adjudge, order and decree* that the defendants, Strole Drug Company, Incorporated, its officers, salesmen, servants, clerks, agents, workmen, employees, attorneys and every person claiming under, by or through the said defendant, or in any way connected with it, and J. Lorom Strole, are hereby *enjoined and restrained* from hereafter in any manner selling a product as and for Coca-Cola, or from in any way or manner passing off any product as and for Coca-Cola that is not the product of the complainant, when Coca-Cola is called for at a soda fountain or fountains, or any other place or places where soft drinks are dispensed by them or either of them, and also from selling for Coca-Cola any product which is not the Coca-Cola when Coca-Cola is called for and from using said name of Coca-Cola as applied to any product except the product of the complainant, The Coca-Cola Company, (a corporation) of Atlanta, Georgia.

And the Court doth further *adjudge, order and decree* that the defendants shall pay the taxed costs

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of this suit, and that after the payment of such costs, this cause shall be removed from the docket.

EDMUND WAMMATT, JR.,

U. S. District Judge

(Seal)

Norfolk, Virginia.

July 23rd, 1914.

Candler, Thomson & Hirsch, Atlanta, Ga.; Robert W. Shultice, Norfolk, Va., for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF MICHIGAN

No. 26

THE COCA-COLA COMPANY, Complainant,

v.

RIVERVIEW PARK COMPANY, Defendant.

Present: The HONORABLE CLARENCE W. SESSIONS,
United States District Judge, Sitting by Designation.

It Appearing to the Court from the stipulation filed herein that the parties hereto have consented thereunto,

The Court Doth Order, Adjudge and Decree that the defendant, Riverview Park Company, its officers, directors, stockholders, agents, servants and employees, and each of them, be and they are hereby forever and *perpetually enjoined and restrained* from selling or advertising for sale under the name "Coca-Cola" any beverage other than that manufactured and sold as Coca-Cola by the complainant, and from selling and delivering in response to orders, verbal or written, for Coca-Cola any beverage other than the Coca-Cola manufactured and sold by the complainant; the complainant having waived an accounting of profits or damages herein.

This decree is final and the court directs the costs hereof to be taxed by the clerk under the direction of the Court to be adjudged against the defendant.

THE COCA-COLA COMPANY

UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF MICHIGAN. } ss.

I, ELMER W. VOORHEIS, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of Final Decree in the therein entitled cause as the same appears on file and of record in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said district, this 24th day of August, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States of America the one hundred and forty-seventh.

(Sd) ELMER W. VOORHEIS, Clerk.

By CARRIE DAVISON,

Deputy Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.; James Love Hopkins, St. Louis, Missouri, for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF VIRGINIA, CONTINUED AND
HELD AT HARRISONBURG, VIR-
GINIA, ON JULY 7, 1916

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

I. L. FLORY, Doing Business under the Name of
ELKTON BOTTLING COMPANY, Defendant.

The complainant, the Coca-Cola Company, having heretofore given notice, which was duly served upon the defendant, I. L. Flory, that it would, on the 6th day of June, 1916, move the Court at its place of session at Harrisonburg, Virginia, for an award of the injunction hereinafter decreed, and the said motion having, by consent of parties, been continued until this date, and said complainant, by counsel, having tendered its bill of complaint against the said defendant, together with sundry affidavits and exhibits in support of the allegations of said bill, and moved the Court for the award of an injunction as prayed in said bill; the defendant, by counsel, asked leave to file his answer to said bill, which leave being granted, said answer was thereupon accordingly filed; and, thereupon, the complainant and the defendant having agreed that the cause shall be finally heard upon the said bill, answer, affidavits and exhibits (the affidavits being treated as depositions), and the defendant having by his said answer indicated that

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he does not desire to contest the said injunction, the above-entitled cause came on this 7th day of July, 1916, to be heard on said bill, answer, affidavits and exhibits, and was argued by counsel;

Upon consideration whereof, the Court being of opinion that the complainant is entitled to the relief prayed for, it is accordingly *adjudged, ordered and decreed* that said defendant, I. L. Flory, his agents, servants, employes, and each of them, be and are hereby *enjoined and restrained* from using, in connection with the manufacture, advertising, offering for sale or sale of any beverage, the name "Coca-Cola," or any like word or words, whether alone or in connection with other words or names, and further, from doing any act or thing or using any name or names, contrivances, artifice or device which may be calculated to represent or induce the belief that any bottled product, not authorized by the complainant, is Coca-Cola; and that said defendant deliver up to the clerk of this Court, or to the complainant, any cap, crown, bottle, label and any and all property in his possession or under control having the trade-mark name Coca-Cola thereon.

And it is *further ordered and decreed* that each party pay its own costs.

And all matters in controversy in this cause having been finally determined, it is ordered to be stricken from the docket of the Court.

A Copy: *Teste.*

FRANK C. STIPE,
Deputy Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.; *D. O. Dechert*, Harrisonburg, Va., for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES, EASTERN DISTRICT
OF WISCONSIN

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

HENRY SPERBER, Respondent.

DECREE AND INJUNCTION.

Be It Remembered, that this day this cause coming on upon the agreement and stipulation of the parties thereto, by their respective counsel, upon the said agreement and stipulation, and upon complainant's bill herein, and upon motion of complainant's counsel,

It is *Ordered, Adjudged and Decreed*, that the said Henry Sperber, and all persons acting by or under his authority and direction, and all persons to whom knowledge and notice of this order may come, be and they hereby are *perpetually restrained and enjoined* from selling or attempting to sell to any person or persons asking for and desiring to purchase the beverage known as "Coca-Cola" manufactured and sold by the complainant, any other beverage or substitute for said Coca-Cola without first advising such person or persons that the beverage actually sold to them is not Coca-Cola; from substituting any other beverage for the said Coca-Cola without advising the purchasers thereof, of said substituting; and from selling any beverage other than Coca-Cola under any representation direct or indirect that the same is Coca-Cola.

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It is further *Ordered, Adjudged and Decreed* that the respondent pay to the claimant, his costs in this action taxed, by agreement of the parties, at \$50.00.

Dated this 31st day of December, 1912.

(Signed) F. A. GEIGER,

District Judge.

Eastern District of Wisconsin.

Candler, Thomson & Hirsch, Atlanta, Georgia; *E. J. Henning*, Milwaukee, Wisconsin, for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF OHIO, WESTERN DIVISION

No. 2319—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

H. DUNN, Respondent.

ORDER.

Be it remembered that this day this cause coming on to be heard upon the motion of the complainant for a temporary injunction against the respondent, came the complainant by its attorneys and the respondent in person and by his attorneys, and said motion was heard and submitted upon testimony adduced in open Court and upon argument of counsel. The Court being fully advised in the premises finds that said temporary injunction should issue as prayed for in the bill of complaint.

Wherefore it is ordered that said H. Dunn, the respondent herein, his agents, servants, clerks and attorneys, and all persons acting by or under his authority and direction and all other persons to whom knowledge and notice of this order may come, be and they are hereby restrained and enjoined from selling, or attempting to sell, to any person or persons asking for and desiring to purchase the beverage known as Coca-Cola manufactured and sold by the complainant, any other beverage or substitute for said Coca-Cola, without first advising such person or persons that the beverage actually sold to them is not Coca-Cola; from substituting any other beverage for the said

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Coca-Cola without advising the purchasers thereof of said substitution; and from selling any beverage other than Coca-Cola under any representation, direct or indirect, that the same is Coca-Cola until the hearing of this cause or the further order of this Court.

It is further ordered that the costs of the hearing on said motion be assessed against and paid by the respondent, and in default of payment that execution issue therefor.

It is further ordered that the complainant give bond with good and sufficient surety, to be approved by the clerk of this Court, in the penal sum of \$500.00, securing the said respondent against all loss or damage which may result from the issue of this order if it should finally be determined that the same was improperly issued, or that may be awarded to him by reason of the granting of this order. And it is further ordered that the bond given on the granting of the restraining order in this case be released, and the bond herein ordered to be given shall stand in its stead.

To all of the above orders the respondent by his attorney duly excepted immediately and at the time said orders were made.

(Signed) JOHN M. KILLETTS,
District Judge.

Filed April 17th, 1912.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF OHIO, WESTERN DIVISION

No. 2319—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

H. DUNN, Respondent.

DECREE.

This cause this day came on for hearing upon the motion of the complainant for a final decree, and it being shown to the court that the respondent has been served with notice of said motion, and respondent not appearing in court, it is *ordered* that the restraining order heretofore granted herein be, and the same hereby is, made final and permanent, and it is therefore *further ordered* that the said respondent, H. Dunn, his agents, servants, clerks and attorneys and all persons acting by or under his authority or direction, be, and they hereby are, *forever restrained and enjoined* from selling or attempting to sell to any person or persons asking for and desiring to purchase the beverage known as Coca-Cola, manufactured and sold by the complainant, or any other beverage or substitute for said Coca-Cola, without first advising such person or persons that the beverage actually sold to them is not Coca-Cola; from substituting any other beverage for the said Coca-Cola; without advising the purchasers thereof of said substitution; and from selling any beverage other than Coca-Cola under

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any representative, direct or indirect, that the same is Coca-Cola.

And it is *further ordered* that a copy of this decree, certified by the hand of the clerk and the seal of the court, be served upon the respondent, or if said respondent cannot be found, then upon his attorney of record, R. G. Brown, of Memphis, Tennessee, by mailing a copy to said Brown, addressed to him at Memphis aforesaid, by United States Mail, registered letter.

(Signed) JOHN M. KILLETS,
District Judge.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Brown, Geddes, Schmettan & Williams, Toledo, Ohio,
for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF
MISSISSIPPI

IN EQUITY

THE COCA-COLA COMPANY

v.

MISSISSIPPI BOTTLING & MANUFACTURING
COMPANY.

DECREE *Pro Confesso*.

It appearing to the court that the bill in the above cause was filed in this court on the 1st day of July, A. D. 1912, and that subpoena was duly issued and served on the defendant herein, and that no appearance has been entered by Mississippi Bottling & Manufacturing Company, the defendant herein, and also that no answer, plea or demurrer has been filed, and that an order taking the bill as confessed was duly entered in the order book on the 1st day of September, 1912, in the office of the clerk of this court, and no proceeding has been taken by the defendant since the entry of said order, and more than thirty days have elapsed since entering the order *pro confesso*.

It is Hereby *Ordered, Adjudged and Decreed* that the Mississippi Bottling & Manufacturing Company, its associates, salesmen, servants, clerks, agents, workmen, employes and all claiming or holding under or through said defendant be *perpetually enjoined and restrained* from in any way or manner making or sellings its product in such a way as to pass off the same

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as and for the product of The Coca-Cola Company and from using in any form or manner or in any way whatsoever the name Coca-Cola, as applied to any drink except the drink of The Coca-Cola Company, and from doing any acts in any manner or form calculated to deceive.

It is Further *Ordered, Adjudged and Decreed* that the defendant deliver up to this court within thirty days from the date of this order, any and all labels in its possession, whether or not the same be attached to containers or not, which labels bear the name Coca-Cola or the name in association with any other words, and all of its product made in a form sufficiently similar to the product of The Coca-Cola Company as to cause deception.

It is Further *Ordered, Adjudged and Decreed* that the Mississippi Bottling and Manufacturing Company, its associates, salesmen, servants, clerks, agents, workmen, employees, and all claiming or holding under or through the said defendant, be *perpetually enjoined* from manufacturing, offering for sale and advertising a product and selling it under the name of Coca-Cola or a colorable imitation thereof, and from manufacturing or offering for sale or advertising a product so similar to the product of The Coca-Cola Company in general appearance, color and consistency as to cause deceit.

This cause is hereby referred to W. H. Cook as special master, he being appointed as such for special fitness and convenience of the Court, who will hear proof and make report at the next regular term of the Court upon the following point: What damages have been sustained by complainant, The Coca-Cola Company, on account of the Mississippi Bottling & Manufacturing Company having sold a product that is not Coca-Cola under and by the name of Coca-Cola, or having sold a product that is not Coca-Cola when Coca-Cola is called for or having sold a product

sufficiently similar to Coca-Cola as to be liable to cause deception.

The Special Master will take proof on said order of reference at such times and places as might suit the convenience of himself and the parties to the cause, and due notice of all hearing will be given to the parties of their counsel in interest unless the times and places thereof be fixed by consent.

The defendant, the Mississippi Bottling & Manufacturing Company, will pay the costs of the cause.

Candler, Thomson & Hirsch, Atlanta, Ga.; Sullivan & Conner, Hattiesburg, Miss., for Plaintiff.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES, EASTERN DISTRICT OF MIS-
SOURI, EASTERN DIVISION

No. 4288—IN EQUITY

THE COCA-COLA COMPANY, Complainant,
v.
CHARLES A. OTTINGER and L. C. DAGGETT,
Defendants.

FINAL DECREE.

Now this day, the parties hereto having consented by stipulation in writing to the entry of this decree, the Court doth

Order, Adjudge and Decree, That the Defendants, Charles A. Ottinger and L. C. Daggett, their agents, servants and employes, and each of them be and they are hereby forever and *perpetually enjoined and restrained* from selling and delivering to any person, in response to orders for Coca-Cola any other beverage (whether in the form of syrup or carbonated) than made and sold by the Complainant, The Coca-Cola Company, or its licensees, under the trade-mark Coca-Cola as the same has been registered by the Complainant in the United States Patent Office, Certificate No. 22,406 of January 31st, 1893, and Certificate No. 47,189 of October 31st, 1905; which said words "Coca-Cola" this Court finds to be and constitute a lawful, valid and subsisting trade-mark, which is the sole and exclusive property of the Complainant.

Further ordered that Defendants pay the costs

v. CHARLES A. OTTINGER and L. C. DAGGETT

herein to be taxed by the Clerk under the direction of the Court and that execution issue thereof.

DAVID P. DYER,
District Judge.

The parties hereto stipulate and agree that the foregoing and final decree may be entered herein.

Candler, Thomson & Hirsch, James L. Hopkins,
Attorneys for Complainant.

Robt. L. McLaran, Attorney for Defendants.

Filed and entered April 27, 1914.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF WEST VIRGINIA, AT CHARLESTON

IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

P. A. GEORGE, HOMER H. GEORGE and
GEORGE A. MILLER, doing business as
P. A. GEORGE & COMPANY,
Defendants.

This day The Coca-Cola Company, a corporation, by *French and Easley*, its counsel, presented its bill, duly verified, which has heretofore been filed in the Clerk's office of this Court, at Bluefield, praying for an injunction against said defendants, enjoining and restraining them from the acts complained of in said bill; and also filed a notice to said defendants duly accepted by their counsel, of complainants' intention to apply for said injunction on this day.

The said defendants appeared by *Thomas W. Reed*, their counsel, and asked leave to file, and did file their answer, duly verified, to which the complainant replied generally. And in said answer, defendants moved to dismiss said bill on the ground that the Court is without jurisdiction of the matters and things contained therein; which motion the Court doth overrule, and it is so ordered.

And in support of its said motion, the complainant asked leave to file, and did file the affidavits of Charles H. Candler, S. C. Dobbs, H. B. Pierce, W. B. Stewart, W. L. Sams, Charles C. Ross and H. C.

Fuller, with the accompanying exhibits; and the defendants asked leave to file, and did file the affidavit of J. E. Johnson.

And it being made to appear upon the said bill of complainant and its said affidavits, and the said answer and affidavits filed by said defendants as aforesaid, that an injunction preliminary to the final hearing is proper, enjoining the defendants herein from the acts complained of and threatened to be committed,

Therefore, complainant's application for such preliminary injunction is granted, upon its giving bond, with a good and sufficient surety to be approved by the Clerk of this Court, at Bluefield, in the penal sum of \$1,000.00, securing the said defendants against all loss or damages which may result from the issuing of said order, if it should be finally determined that the same was improperly issued, or that may be awarded to them by reason of the granting of said order.

Now, therefore, it is ordered; that the said P. A. George, Homer H. George and George A. Miller, doing business as P. A. George & Company, your agents, servants and employes, and all other persons acting by or under your authority or discretion be, and you are hereby *specially restrained and enjoined* until the further orders of this Court:

First: From selling and delivering, in response to requests or orders for Coca-Cola, any beverage other than that made from the Coca-Cola syrup, manufactured by complainant;

Second: From using any name sufficiently similar to the name Coca-Cola, or any name applied to any drink as to cause deceit;

Third: From infringing upon the trade rights of complainant in and about the use of said name, as well as of said product, and from substituting and selling any other beverage or drink therefor. And

THE COCA-COLA COMPANY

the defendants waived service of a formal writ of injunction herein.

Dated at Charleston, in the Southern District of West Virginia, this the 6th day of July, 1916.

• BENJAMIN F. KELLER,
District Judge, Southern District
of West Virginia.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF WEST VIRGINIA

IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

P. A. GEORGE & COMPANY, *et al.*, Defendants.

This day came again the parties by their Attorneys, and the parties hereto having entered into an agreement to the effect that the Defendants, P. A. George & Company, will not hereafter dispense to any of their patrons or customers calling for "Coca-Cola" at their fountain or otherwise, any other drink, or combination of syrups or drinks, claiming or holding out the same to be Coca-Cola, and will not in their trade substitute any drink of like character and appearance for Coca-Cola to persons calling for Coca-Cola at their fountain, or other place in the store, and will hereafter dispense at their place of business, and through their fountain only the product of the Plaintiff known as "Coca-Cola," to all patrons and customers calling for the same, and will in good faith abstain from all substitution or other products or drinks to customers desiring or calling for Coca-Cola, and will especially not dispense from their Coca-Cola containers at their fountain or fountains, any other product or drink other than the Coca-Cola manufactured by the Plaintiff, the Court doth therefore by consent and agreement of parties, ratify and confirm said agreement as a compromise agreement of record herein.

THE COCA-COLA COMPANY

And thereupon, on motion of the Plaintiff, the above and foregoing is made the order of this Court, and the injunction heretofore awarded in this cause is dissolved, and the Plaintiff's Bill is dismissed, and this cause is ordered retired from the docket.

We agree to the entering of the above consent decree.

THE COCA-COLA COMPANY,

By *Candler, Thomson & Hirsch*, Attorneys for Plaintiff.

P. A. GEORGE & COMPANY,

By *Thos. H. Read*, Attorney for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES, DISTRICT OF INDIANA

No. 44—IN EQUITY

THE COCA-COLA COMPANY, Complainant,
v.
EDWARD FERGER, Defendant.

FINAL DECREE.

Now this day, the parties hereto having consented by stipulation in writing to the entry of this decree, the Court doth

Order, Adjudge and Decree that the defendant, Edward Ferger, his agents, servants and employees, and each of them be and they are hereby forever and *perpetually enjoined and restrained* from selling and delivering to any person in response to orders for Coca-Cola any other beverage (whether in the form of syrup or carbonated) than that made and sold by the complainant, The Coca-Cola Company, or its licensees, under the trade-mark Coca-Cola as the same has been registered by the complainant in the United States Patent Office, Certificate No. 22,406 of January 31st, 1893, and Certificate No. 47,189 of October 31st, 1905; which said words "Coca-Cola" this Court finds to be and constitute a lawful, valid and subsisting trade-mark, which is the sole and exclusive property of the complainant.

Further ordered that defendant pay the costs herein to be taxed by the Clerk under the direction of the Court and that execution issue therefor.

THE COCA-COLA COMPANY

The parties hereto stipulate and agree that the foregoing and final decree may be entered herein.

Candler, Thomson & Hirsch and *James L. Hopkins*,
Attorneys for Complainant.

Morgan & Morgan, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF VIRGINIA, RICHMOND DIVISION

No. 25—IN EQUITY

THE COCA-COLA COMPANY, Complainant,
v.
B. F. YELTON, Defendant.

FINAL DECREE.

This cause in which the bill was taken for confessed as to the said defendant by an order and decree entered herein on the 11th day of December, 1916, came on for trial hearing before the HONORABLE EDMUND WADDILL, JR., Judge of the District Court of the United States for the Eastern District of Virginia, on the bill taken for confessed and exhibits filed therewith. On consideration whereof the court is of opinion and *doth adjudge and decree* as follows:

First: That the defendant and all of his associates, salesmen, clerks and employes, and each and every person claiming under him or by or through said defendant, or in any way connected with his business, be *perpetually enjoined and restrained*:

(a) From in any way or manner selling or offering to sell or from delivering, in response to orders for your complainant's product Coca-Cola, a spurious and inferior beverage, the color whereof is in simulation of your complainant's beverage as and for the carbonated drink made from your complainant's Coca-Cola syrup; or from using said spurious or inferior syrup to make the drinks served to customers ordering the product of your complainant.

THE COCA-COLA COMPANY

(b) From infringing upon the trade rights of your complainant, and from the further commission of the acts of substitution made by the defendant when Coca-Cola is called for by customers, in fraud of the purchasing public and in violation of the rights of your complainant.

(c) From selling and delivering, in response to requests or orders for Coca-Cola, any beverage other than that made from the Coca-Cola syrup manufactured by your complainant.

(d) From using any name sufficiently similar to the name Coca-Cola or any name applied to any drink as to cause deceit.

(e) From marketing a product of the same identical or similar color which has for so long been used by your complainant in marketing its product, for the purpose of inducing customers or purchasers to believe that the product sold or offered for sale is Coca-Cola.

(f) From selling or exposing for sale any beverage other than your complainant's product Coca-Cola, having the peculiar and distinctive color and appearance of your complainant's product Coca-Cola, or any such approximation thereof as may be likely to deceive the public without such differentiation as will effectually prevent the passing off of a spurious product as and for the product of your complainant.

Second: It is further ordered and adjudged that the complainant is entitled to have the sole and exclusive right to the use of the trade-mark or trade name "Coca-Cola" in connection with a soft drink or beverage.

Third: It is further ordered that this cause be referred to Ernest M. Long, he being appointed as such for the special fitness and convenience of the court, to take and hear proof and make report to the next regular term of this court what damages have been sustained by the plaintiff the Coca-Cola Company by reason of the sale or sales by the defendant

B. F. Yelton, his agents and employes, of any beverage not made by your complainant as and for Coca-Cola when Coca-Cola is called for, or the sale of any spurious product or imitation of complainant's product known as Coca-Cola, or by the use of any product in any form sufficiently similar to the form of your complainant's product as to cause deception to the persons purchasing or calling for the same. The special master will take proof on said order of reference at such time and place as may suit the convenience of himself and parties to the cause, and due notice of all hearings will be given to counsel or to the parties in interest, unless times and places thereof be fixed by consent.

Fourth: It is *further adjudged and ordered* that defendant do pay all costs of this suit to the date of this decree.

This the 29th day of January, 1917.

EDWARD WADDILL, JR.,
Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; *C. V. Meredith* and *W. R. Meredith*, Richmond, Va., for Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

THE COCA-COLA COMPANY, Complainant,

v.

P. E. STÜTZ, doing business as STUTZ CONFEC-
TIONERY STORE, Defendant.

DECREE.

The Bill of Complaint herein having been taken *pro confesso* as to the defendant, P. E. Stutz, doing business as the Stutz Confectionery Store, and this cause having been duly submitted to the Court, it is *considered, ordered and decreed*:

A. That the defendant, P. E. Stutz, his agents, servants and employees and each of them be and they are hereby *enjoined*—

1. From infringing upon the trade rights of The Coca-Cola Company in the manner in the Bill of Complaint herein set forth, and from the further commission of the acts of substitution in the Bill of Complaint more particularly described.

2. From selling and delivering in response to requests or orders for Coca-Cola any beverage other than that made from the Coca-Cola syrup manufactured, by the complainant, whether from syrup or from a bottle of the finished product.

3. From using any name sufficiently similar to the name Coca-Cola, or any name applied to any drink, so as to cause deceit.

4. From marketing a product of same or identical or similar color used by the complainant, without such differentiation as will prevent the passing off

of a spurious product as or for Coca-Cola, the product of the complainant.

5. From selling or exposing for sale, any beverage other than the complainant's product Coca-Cola, having the peculiar and distinctive color and appearance of said product, or any approximation thereon, as likely may deceive the public without such differentiation as effectually will prevent the passing off of a spurious product as and for the product of the complainant.

B. That the Defendant and all of his associates, salesmen, servants, agents, workmen, employees and attorneys and each and every person claiming under or by or through the defendant be *enjoined and restrained* as aforesaid and henceforth from the date of the entry of this decree.

C. The defendant will pay the costs of this action.

D. This action is reserved for such further and other orders and proceedings as hereafter may be necessary to execute and enforce this decree.

WALTER EVANS, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Selligman & Selligman, Louisville, Ky.,

For Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN
DISTRICT OF KENTUCKY

THE COCA-COLA COMPANY, Complainant,

v.

L. H. ARMSTRONG, Doing Business as STAGE
CAFE, Defendant.

DECREE.

Comes the complainant, The Coca-Cola Company by *Selligman & Selligman*, its counsel, and L. H. Armstrong, doing business as Stage Cafe, in his own proper person, and by agreement submit this action in chief upon the verified allegations of the Bill of Complaint, and the Court being sufficiently advised, it is *considered, ordered and decreed*:

A. That the defendant, L. H. Armstrong, his agents, servants and employees, and each of them be, and they are hereby *enjoined*:

1. From infringing upon the trade rights of The Coca-Cola Company in the manner in the Bill of Complaint herein set forth, and from the further commission of the acts of substitution in the Bill of Complaint more particularly described.

2. From selling and delivering in response to requests or orders for Coca-Cola, any beverage other than that made from the Coca-Cola syrup manufactured by the complainant, whether from syrup, or from a bottle of the finished product.

3. From using any name sufficiently similar to the name Coca-Cola, or any name applied to any drink, so as to cause deceit.

4. From marketing a product of same or identical or similar color used by the complainant, without

such differentiation as will prevent the passing off of a spurious product as or for Coca-Cola, the product of the complainant.

5. From selling or exposing for sale, any beverage, other than complainant's product Coca-Cola, having the peculiar and distinctive color and appearance of said product, or any approximation thereof, as likely may deceive the public, without such differentiation as effectually will prevent the passing off of a spurious product as and for the product of the complainant.

B. That the defendant and all of his associates, salesmen, servants, agents, workmen, employees and attorneys and each and every person claiming under or by or through the defendant be *enjoined and restrained* as aforesaid and henceforth from the date of the entry of this decree.

C. The complainant waives an accounting of profits.

D. The defendant will pay the costs of this action.

E. This action is reserved for such further and other orders and proceedings as hereafter may be necessary to execute and enforce this decree.

(Sd) WALTER EVANS, Judge.

Enter January 15, 1916.

Seen and approved:

THE COCA-COLA COMPANY,

By *Candler, Thomson & Hirsch*, and

Selligman & Selligman,

Attorneys.

L. H. Armstrong, who hereunto signs his name in his own proper person and indicates his approval and ratification of the above and foregoing decree this 14th day of January, 1916.

(Sd) L. H. ARMSTRONG.

Witness

LOUISA C. BROWN.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF VIRGINIA

IN EQUITY

COCA-COLA COMPANY, Complainant,

v.

EGISTO EGIZIANI, Defendant.

FINAL DECREE.

This day came complainant by counsel and came also the defendant by counsel, and on motion of the defendant, by counsel, leave is given him to withdraw his answer hitherto filed in this cause, and thereupon it is ordered that the bill of complaint be taken for confessed.

And this cause by consent of the defendant by counsel evidenced by his endorsement upon the back of this decree came on for final hearing before the HONORABLE EDMUND WADDILL, JR., Judge of the District Court of the United States for the Eastern District of Virginia, on the bill of complaint taken for confessed and affidavits of certain expert witnesses for complainant hitherto filed in this cause, and was argued by counsel. And thereupon and upon consideration thereof, the Court doth *adjudge and decree* as follows:

I.

That the defendant, Egisto Egiziani, and all of his associates, salesmen, servants, clerks, agents and employes and each and every person claiming under him or by or through said defendant, or in any way connected with his business, be *perpetually enjoined and restrained*:

V. EGISTO EGIZIANI

(a) From in any way or manner selling or offering for sale a product as and for Coca-Cola which is not the product of your orator in any way, so as to pass the same off as and for the product of your orator.

(b) From selling or offering for sale a soft drink in the same identical color which has for so long been used by your orator in marketing its product for the purpose of inducing customers or purchasers to believe that the product sold or offered for sale is Coca-Cola.

(c) From selling or offering for sale any beverage not made by your orator as and for Coca-Cola when Coca-Cola is called for; or from representing any product not made by your orator to be Coca-Cola; or from any act in the premises in any manner or form calculated to deceive or defraud persons offering to purchase Coca-Cola.

II.

And it appearing to the Court that the complainant does not desire to take any proof as to the damages which it has sustained by reason of the sale or sales made by the defendant, or his agents and employes, as alleged in the complainant's bill, it is *further adjudged, ordered and decreed* that the complainant recover of the defendant all its costs in this suit had and expended.

And nothing further remaining to be done herein, it is *further ordered* that this suit be stricken from the docket and placed among the ended causes.

EDMUND WADDILL, JR.,

U. S. District Judge.

Richmond, Va., December 2nd, 1914.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Meredith & Cocke*, Richmond, Va.; *Wyndham Meredith*, Richmond, Va., for Complainant.

THE COCA-COLA COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF VIRGINIA

IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

C. DARHANIAN, doing business under the name
and style of THE DARON COMPANY,
Defendant.

FINAL DECREE.

This cause came on for final hearing before the Hon. Edmund Waddill, Jr., Judge of the District Court of the United States for the Eastern District of Virginia, on the pleadings and proofs in the cause, including the stipulation of counsel this day filed that the affidavits hitherto filed in this cause as well as the additional affidavits of S. C. Dobbs and Charles H. Candler and A. G. Smith and of W. G. Kitterer, this day filed on behalf of the complainant, as well as the affidavit of the defendant, C. Darhanian, likewise this day filed on behalf of the defendant, as also the answer of the defendant, shall be considered and treated by the Court as if each were the deposition of the affiant duly taken, from all of which the Court is of opinion and *adjudged and decrees* as follows:

I.

That the defendant and all of his associates, salesmen, servants, clerks, agents and employes, and each and every person claiming under him or by or through said defendant or in any way connected with his business, be *perpetually enjoined and restrained*:

(a) From in any way or manner selling or offering for sale a product as and for Coca-Cola, which is not the product of your orator in any way so as to pass the same off as and for the product of your orator.

(b) From selling or offering for sale a soft drink in the same identical color which has for so long been used by your orator in marketing its product for the purpose of inducing customers or purchasers to believe that the product sold or offered for sale is Coca-Cola.

(c) From selling or offering for sale any beverage not made by your orator as and for Coca-Cola when Coca-Cola is called for; or from representing any product not made by your orator to be Coca-Cola; or from any act in the premises in any manner or form calculated to deceive or defraud persons offering to purchase Coca-Cola.

II.

It is further *ordered and adjudged* that the complainant is entitled to have the sole and exclusive right to the use of the trade-mark or trade-name "Coca-Cola" in connection with a soft drink or beverage.

III.

That said cause is hereby referred to E. M. Long, Esq., he being appointed as such for special fitness and convenience to the Court to take and hear proof and make report to the next regular term of this Court upon the following points:

(a) What damage has been sustained by the plaintiff, The Coca-Cola Company, by reason of the sale by the defendant, C. Darhanian, his agents and employes, of any beverage not made by your complainant as and for Coca-Cola when Coca-Cola is called for or the sale of any spurious product and imitation, or by the use of any product in any form sufficiently similar to the form of your orator's product as to cause deception to the person purchasing or

THE COCA-COLA COMPANY

calling for the same. The Special Master will take proof on said order of reference at such time and place as may suit the convenience of himself and parties to the cause and due notice of all hearing will be given to counsel for the parties in interest unless times and places thereof be fixed by consent.

Defendant will pay all costs of the cause to the date of this decree.

This 14th day of March, 1914.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.,
Meredith & Cocke, and *Wyndham Meredith*, Richmond, Va.,

For Complainant.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF VIRGINIA

IN EQUITY

COCA-COLA COMPANY, Complainant,

v.

D. D. MURPHY, Defendant.

FINAL DECREE.

This day came complainant by counsel and came also the defendant by counsel, and on motion of the defendant by counsel leave is given him to withdraw his answer hitherto filed in this cause, and thereupon it is ordered that the bill of complaint be taken for confessed.

And this cause by consent of the defendant by counsel evidenced by his endorsement upon the back of this decree came on for final hearing before the HONORABLE EDMUND WADDILL, JR., Judge of the District Court of the United States for the Eastern District of Virginia on the bill of complaint taken for confessed, and was argued by counsel. And thereupon and upon consideration thereof, the Court doth adjudge and decree as follows:

1.

That the defendant, D. D. Murphy, and all of his associates, salesmen, servants, clerks, agents and employes, and each and every person claiming under him or by or through said defendant, or in any way connected with his business, be *perpetually enjoined and restrained*:

THE COCA-COLA COMPANY

(a) From in any manner selling or offering for sale a product as and for Coca-Cola which is not the product of your orator in any way, so as to pass the same off as and for the product of your orator.

(b) From selling or offering for sale a soft drink in the same identical color which has for so long been used by your orator in marketing its product for the purpose of inducing customers or purchasers to believe that the product sold or offered for sale is Coca-Cola.

(c) From selling or offering for sale any beverage not made by your orator as and for Coca-Cola when Coca-Cola is called for; or from representing any product not made by your orator to be Coca-Cola; or from any act in the premises in any manner or form calculated to deceive or defraud persons offering to purchase Coca-Cola.

2.

And it appearing to the Court that the complainant does not desire to take any proof as to the damages which it has sustained by reason of the sale or sales made by the defendant, or his agents and employes, as alleged in the complainant's bill, it is *further adjudged, ordered and decreed* that the complainant recover of the defendant all its costs in this suit had and expended.

And nothing further remaining to be done herein, it is *further ordered* that this suit be stricken from the docket and placed among the ended causes.

EDMUND WADDILL, JR.,

U. S. Dist. Judge.

Richmond, Va., June 28, 1915.

A true copy—Attest:

R. E. POWERS,

Deputy Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Meredith & Cocke*, Richmond, Va., for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN
DISTRICT OF KENTUCKY

APPLICATION FOR INJUNCTION, ETC.

IN EQUITY

THE COCA-COLA COMPANY, Complainant,
v.
J. ALTON KOLB, Defendant.

DECREE.

The complainant, The Coca-Cola Company, and the defendant, J. Alton Kolb, having stipulated that the verified allegations of the bill of complaint may be taken as true, and this action having been submitted in chief, and the Court being sufficiently advised, it is *considered, ordered and decreed—*

(a) That the defendant, J. Alton Kolb, his agents, servants and employees, and each of them, be, and they are hereby *enjoined—*

1. From infringing upon the trade rights of The Coca-Cola Company, as in the complaint described, and from the further commission of the acts of substitution as therein described.

2. From selling and delivering, in response to requests or orders for Coca-Cola, any beverage other than that made from the Coca-Cola syrup manufactured by the complainant.

3. From using any name sufficiently similar to the name of Coca-Cola, or any name applied to any drink, as to cause deceit.

THE COCA-COLA COMPANY

4. From selling or exposing for sale any beverage simulating the product Coca-Cola without such differentiation as will effectually prevent the passing off of a spurious product as and for Coca-Cola, the product of the complainant.

(b) No accounting of profits or damages in the premises is required of the defendant.

(c) The defendant will pay the costs of this action.

(d) This action is reserved for such further and other orders and proceedings as hereafter may be necessary to uphold and enforce this decree.

A copy—Attest:

A. G. RONALD, Clerk,

By M. E. HOLLIBAN, D. C.

*Candler, Thomson & Hirsch, Atlanta, Georgia;
Selligman & Selligman, Louisville, Ky.; for Com-
plainant.*

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF VIRGINIA

IN EQUITY

THE COCA-COLA COMPANY

v.

LENA WILLS, doing business as WILLS
PHARMACY

Presiding: HONORABLE HENRY C. McDOWELL,
Judge.

This Cause came on to be heard upon the 29th day of October, 1917, on motion of the plaintiffs for permanent injunction, in accordance with the prayer of the bill, and by consent of parties, in open Court, it appearing that they have agreed upon a settlement of the matters involved in this cause, in accordance with this order, the Court doth order and decree that the defendant, Lena Wills, her servants, agents and employes be; and they are hereby *perpetually enjoined*:

1st: From infringing upon the trade rights of The Coca-Cola Company, and from substituting other drinks as and for Coca-Cola.

2nd: From selling and delivering, in response to requests or orders for Coca-Cola any beverage other than that made from the Coca-Cola syrup, manufactured by the plaintiff.

3rd: From using any name sufficiently similar to the name of Coca-Cola, applied to any drink, as to cause deceit.

THE COCA-COLA COMPANY

4th: From marketing a product of the same identical or similar color, so long used by the plaintiff in its products.

5th: From selling or exposing for sale any beverage other than the plaintiff's product, Coca-Cola, having the peculiar and distinctive color and appearance of plaintiff's product, or any such approximation thereof as may be likely to deceive the public, without such differentiation that will effectually prevent the passing off of a spurious product as and for the product of the plaintiff.

6th: That plaintiff be awarded no damages for any previous acts complained of in the bill.

7th: That each party shall pay its own costs accrued in this cause.

The object of this suit having been accomplished it is ordered that the same be stricken from the docket.

We hereby consent that the above order may be entered:

Candler, Thomson & Hirsch, Caskie & Caskie,
Attorneys for The Coca-Cola Co.

Geo. A. Revercomb, Attorney for Lena Wills.

A Copy: *Teste:*

LOUIS H. PRICE,
Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE JACKSON DIVISION
OF THE SOUTHERN DISTRICT
OF MISSISSIPPI

THE COCA-COLA COMPANY

v.

J. R. JENKINS.

DECREE.

Be It Remembered, That this day came on to be heard the above entitled cause when came both parties by their attorneys and a decree by consent is entered herein as follows:

1. It is *ordered, adjudged and decreed* that this court has jurisdiction.

2. It is *further ordered, adjudged and decreed*, without deciding whether said Jenkins has or has not done those things alleged in the bill to have been done, and these questions are expressly permitted from decision, and this decree shall be without prejudice to either party with reference to them—that he, the said Jenkins, his agents, servants, employes, each and all of them be and they are hereby as to the future, *restrained, enjoined and prohibited*:

(a) From infringing upon the rights of The Coca-Cola Company.

(b) From substituting for Coca-Cola, when and as called for by any customer, any other or different beverage or drink and from not supplying said Coca-Cola produced by complainant when and as called for.

(c) From selling and delivering in response to such requests or orders for Coca-Cola any beverage other than that made from the Coca-Cola syrup manufactured by complainant free and unmixed with any

THE COCA-COLA COMPANY

adulterant or other substance used or attempted to be used in substitution of said Coca-Cola syrup and which could be no substitute by reason of its color and other quality.

3. From using any name sufficiently similar to the name Coca-Cola, or any name applied to any drink as to cause deceit and deception with reference to the drink or beverage so called for, and from marketing any product of the same or identical color so long used by complainant in its product, and thereby and from selling or exposing for sale any beverage as Coca-Cola other than Coca-Cola produced by complainant the peculiar and distinctive color and appearance of said product or an approximation thereof, which would, or would be likely to deceive the public without differentiation or distinguishing marks and characteristics as will effectually prevent the passing off wrongfully of an inferior product as and for the product of complainant.

4. That the claim for damage upon the part of complainant be dismissed.

5. That the claim for damages in the cross bill be dismissed, and a *perpetual injunction* be issued in accordance with the foregoing decree.

6. That The Coca-Cola Company, complainant, pay all costs of this suit.

Ordered, adjudged and decreed this the 8th day of April, 1918.

H. C. NILES,
Judge.

Candler, Thomson & Hirsch; Green & Green, for Plaintiff.

O. K.

A. M. Perry, Atty. for Defendant.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF MISSISSIPPI. } ss.

I, Jack Thompson, Clerk of the District Court of the United States for the Southern District of Mississippi, do hereby certify that the foregoing Restraining Order and Final Decree are true and correct copies of the original orders as the same appear of record in my office at Jackson, Miss.

Witness my hand and seal this August 17, 1922.

JACK THOMPSON, Clerk.

THE COCA-COLA COMPANY

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION

No. 10—IN EQUITY

THE COCA-COLA COMPANY, a Corporation,
Complainant,

v.

MARY F. GILDEA, JOSEPH W. GILDEA, and
ELLA RUDOLPH, Defendants.

FINAL DECREE.

This cause came on to be further heard at this term and it appearing that a decree *pro confesso* was taken by complainant herein on October 13, 1913, and that no proceedings have been taken by the defendants to set aside said decree, now upon motion of Murray Seasingood, solicitor for complainant, and upon consideration of the foregoing it is *ordered, adjudged and decreed* as follows, viz.:

That the defendants, Mary F. Gildea, Joseph F. Gildea and Ella Rudolph, and each of them, their agents, employes and associates, and each and every person connected with their business be and they are hereby *perpetually enjoined, prohibited and commanded to refrain*:

From in any way or manner selling or dispensing the drink and beverage known as Gay-Ola in place of and for the drink known as Coca-Cola;

From selling and dispensing Gay-Ola when Coca-Cola is asked or called for;

From in any way or manner selling or dispensing

any other syrup, drink or beverage of the same or substantially the same color, consistency, and general appearance as Coca-Cola, in place of or for Coca-Cola, or when said Coca-Cola is asked or called for;

From in any way or manner selling or dispensing said Cola drink heretofore sold by the defendants, or any other drink or beverage similar thereto, in bottles, the same or substantially similar to the bottle filed in Court by the complainant as Exhibit No. 2, with the affidavit of H. H. Glaze, and A. J. Connor;

From dispensing any Cola drink of the same or substantially similar color to Coca-Cola, except when the same is sold in bottles, receptacles or packages marked or labelled prominently with the name Gay-Ola, and designed and intended to be sold and delivered to the ultimate consumer in said original bottle, receptacle or package with said mark or label still remaining thereon.

It is further ordered that the complainant recover its costs of the defendants.

Entered by JUDGE HOLLISTER, April 4, 1914.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Paxton, Warrington & Seasongood*, Cincinnati, Ohio, for Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF ILLINOIS, EASTERN DIVISION

No. 30905

THE COCA-COLA COMPANY, a Corporation,

v.

GEORGE KOTSONAS.

FINAL DECREE.

This cause coming on upon motion of Complainant to have a final decree entered upon the Bill of Complaint filed herein, the Court does find as follows:

That it has jurisdiction of the subject matter of said cause of action and of the parties hereto:

That heretofore, to wit, on the 23rd day of August, A. D. 1912, there was duly issued from this Court a rule requiring George Kotsonas, the said defendant, to appear in answer to said bill of complaint on the October, 1912, rule day of this Court, being the first Monday in October, 1912.

That said rule was duly and legally served upon said George Kotsonas in person on the 3rd day of September, 1912, twenty (20) days before the said October, 1912, rule day.

That said defendant did not enter his appearance on or before said rule day, and has still failed to enter his appearance in said Court or to plead, answer or demur to said bill of complaint;

That on motion of solicitors for said complainant duly made in this Court on the Twenty-third day of October, 1912, the said defendant was declared in

default, and leave was granted to said complainant to take said bill *pro confesso*;

That the defendant, George Kotsonas, is a vendor of soft drinks, wholesale and retail, in the City of Chicago, Illinois, and that since on or about the month of April, 1912, in said City of Chicago, the said defendant, totally without said complainant's consent, fraudulently and wilfully, with intent to deceive the public and to divert trade and profits from and injure said complainant, and to take advantage of the business established and built up by said complainant and said predecessors, under the name of Coca-Cola, offered for sale and sold, and continues to offer for sale and sell and threatens to continue to offer for sale, a product which is manufactured in such a way as to be most similar to the product of said complainant, in respect to its general appearance, color and consistency, but which is not the product manufactured by said complainant;

That said sales of said product of the defendant have been made when purchasers called for the product of said complainant, and that by substituting his said product for the product of said complainant and by using the name Coca-Cola, said defendant has diverted and now diverts and fraudulently intends to continue to divert, profits which rightfully should come to said complainant and intends to induce purchasers to buy his product as and for the product made by said complainant, and in so doing, to injure and destroy the trade-mark of said complainant;

That it is not necessary in making a drink of the kind and character made by said complainant and which shall be palatable and have an agreeable taste, that it be made to have the color and similarity of said complainant's product;

That said defendant's product is artificially colored with caramel which is used as a decorative feature to the product of the defendant and is in no wise an essential or necessary feature, and there are many

THE COCA-COLA COMPANY

other colorings that could be used, and that said product of the said defendant could have been made having other colors distinct from the color of the product of said complainant and which would make it possible for one who has become familiar with the product of said complainant to differentiate and distinguish the product of the defendant from the product of said complainant;

That the caramel coloring in said complainant's product has become associated with long use in the minds of the public in said complainant's product.

It is therefore *Ordered, Adjudged and Decreed* by the Court, that the defendant, George Kotsonas, and all his associates, salesmen, servants, clerks, agents, workmen, employes and every other person claiming or holding under or through the said defendant, or in any way connected with his business, be *perpetually enjoined and restrained* from in any way or manner making or selling his product in such a way as to pass the same as and for the product of said complainant and from using in any form whatsoever, the name Coca-Cola, as applied to any drink except that of said complainant, or from serving any product except the product of said complainant, when Coca-Cola is asked for;

That said complainant be and is hereby declared and adjudged to have a sole and exclusive right to the use of the mark or name Coca-Cola, in connection with a drink or beverage.

It is further *Ordered, Adjudged and Decreed*, That the matter be referred to Charles B. Morrison, Esq., Master in Chancery of this Court, for the purpose of hearing evidence as to the damages suffered by said complainant on account of the unlawful acts of said defendant, as set forth in said Bill of Complaint, and to report back his findings of fact and law thereon.

It is further *Ordered* that a writ of Permanent Injunction issue to the Marshal of this Court, to be by him served upon the defendant, George Kotsonas,

returnable according to law, *enjoining and restraining* the said defendant and his respective attorneys, servants, agents, associates, workmen, employees and representatives, all claiming or holding under or through him, as in this Final Decree set forth.

Enter: KENESAW M. LANDIS, Judge.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Ringer, Wilhartz & Louer*, Chicago, Ill., for Complainant.

November 26, 1912.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI

No. 133—IN EQUITY

THE COCA-COLA COMPANY, Complainant,
v.
F. E. WILLIAMS, Jr., and E. J. WILLIAMS,
doing business as OWL DRUG STORE,
Defendants.

FINAL DECREE.

This cause having been, by agreement of the parties hereto and their counsel of record, submitted to be heard in Vacation of the Court, and all the parties hereto appearing before the undersigned Judge of said Court by their attorneys of record and announcing that said cause had been settled and adjudged out of court by written agreement executed by the parties hereto and on file in this cause and which is in the following words, to wit:

“This agreement made and entered into this the 23rd day of August, 1916, by and between The Coca-Cola Company, a corporation of the State of Georgia, County of Fulton, City of Atlanta, as party of the first part, and F. E. Williams, Jr., and E. J. Williams, doing business as Owl Drug Store, of the City of Hattiesburg, County of Forrest, State of Mississippi, as parties of the second part,

Witnesseth:

“Whereas, the party of the first part on the 13th day of July, 1914, filed its bill of complaint

in the District Court of the United States for the Southern District of Mississippi, Southern Division, against the parties of the second part, alleging infringement by parties of the second part of the trade-mark of the party of the first part and unfair competition, the said bill of complaint being referred to as a part of this agreement and as setting out the grounds of complaint made by the party of the first part against party of the second part: and whereas, it is the desire of the parties of the said suit to settle the same;

“Now, therefore, in consideration of the relinquishment of any claim which party of the first part may have against parties of the second part for damages on account of the matters and things alleged in said bill of complaint, the parties of the second part agree that they, their associates, servants, clerks, agents, workmen, employes and attorneys and each and every person under or through them or in any way connected with their business, will not in any way or manner handle, sell or dispense any product for and as Coca-Cola that is not the product of the party of the first part, and will not sell or expose for sale any beverage other than the product of the party of the first part, Coca-Cola, having the same peculiar and distinctive appearance and color of said product of the party of the first part, or any such approximation thereof as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of a spurious product as and for the said product of the party of the first part, and will not sell any product that is not Coca-Cola when Coca-Cola is called for either by its proper name, Coca-Cola, or colorable imitation thereof or nickname therefor such as ‘Dope’ and ‘Koke’ or any other name or designation commonly applied to the said product of party of

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the first part and intending to designate the same, and will not use said name Coca-Cola as applied to any product except the product of the Coca-Cola Company.

“It is *further agreed* that a decree may be entered, in Vacation of the Court, in the said suit setting out this agreement and confirming the same and taxing the costs of suit against party of the first part.

“*In Witness Whereof* the said parties have hereunto set their hands on the day and date first above written.

THE COCA-COLA COMPANY,
By *Candler, Thomson & Hirsch,*
and *Stevens & Cook,* Its Attor-
neys, Party of the First Part.

OWL DRUG STORE,
By *F. E. Williams, E. J. Wil-*
liams, Parties of Second Part.”

And the parties, by their said attorneys, before the undersigned Judge agreeing and consenting thereto, it is *ordered, adjudged and decreed* that the settlement and adjustment of said cause so set out in said agreement be and the same is hereby confirmed and adopted as the decree of this court finally determining the said cause; that the defendants, F. E. Williams, Jr., and E. J. Williams, doing business as Owl Drug Store, their associates, servants, clerks, agents, workmen, employes and attorneys and each and every person under or through them or in any way connected with their business, be and they are hereby *perpetually enjoined* from the doing of the things or any of them which the said defendants stipulate in said agreement to refrain from doing; and that the complainants in said cause pay the costs of this suit. The Clerk is directed to enter this decree on the Minutes of this Court.

Ordered, Adjudged and Decreed on this the 25th day of August, A. D. 1916, at Kosciusko, Mississippi.

(Signed) H. C. NILES,

Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN
DIVISION.

In Equity.

I, JACK THOMPSON, Clerk of the District Court of the United States for the Southern District of Mississippi, hereby certify that the foregoing attached three typewritten pages are full, true and correct copies of the original on file and of record in my office at Biloxi, in the southern division of said district.

Given under my hand and seal of said district Court, at Biloxi, in said District, on the 22nd day of August, A. D. 1922.

(Seal)

JACK THOMPSON, Clerk.
By GEO. P. MONEY, D. C.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

No. 797—IN EQUITY

THE COCA-COLA COMPANY, a Corporation,
Complainant,

v.

OPERA PHARMACY, a Corporation,
Defendants.

This cause came on to be again heard at this term and was argued by counsel, and, by agreement of counsel, was submitted at this time for final decision.

And the Court being of opinion that the complainant was entitled to the temporary injunction heretofore awarded and that no cause exists for the dissolution of the same, and that the complainant is entitled to have said temporary injunction perpetuated, upon consideration of all of which it was *adjudged, ordered and decreed* that the defendant, Opera Pharmacy, its associates, salesmen, servants, clerks, agents, workmen and employees, and each and every person claiming under, by or through said defendant, be, and they are hereby *perpetually inhibited, restrained and enjoined* as follows:

First: From infringing upon the trade rights of The Coca-Cola Company as set forth in its bill of complaint, and from any and all further commission of acts of substitution as therein described;

Second: From selling and delivering, in response to requests or orders for Coca-Cola, any beverage, other than that made from the Coca-Cola syrup manufactured by the complainant;

Third: From using any name sufficiently similar to the name Coca-Cola, or any name, applying to any

V. OPERA PHARMACY

drink, as to cause deceit in respect to the complainant's product Coca-Cola;

Fourth: From marketing any product of the same identical or similar color used by said complainant in its said Coca-Cola syrup product;

Fifth: From selling, or exposing for sale, any beverage other than the complainant's product Coca-Cola, having the peculiar and distinctive color and appearance of said product, or any such approximation thereof as may be likely to deceive the public without such differentiation as will effectually prevent the passing off or substitution of any such spurious product as and for the product of the complainant known as Coca-Cola.

And by consent of parties, and in lieu of an accounting for damages for sales by the defendant of substituted articles in the place and stead of the plaintiff's product Coca-Cola, it is agreed that prior to the institution of this suit the complainant has suffered damages by reason of the unlawful substitutions by the defendant for the complainant's manufactured product Coca-Cola in the sum of thirty-seven dollars and fifty cents (\$37.50), and that the complainant is entitled to recover said sum from the defendant as damages in this suit.

It is therefore *adjudged, ordered and decreed* that the complainant, The Coca-Cola Company, a corporation, do recover of and from the defendant, Opera Pharmacy, a corporation, the sum of thirty-seven dollars and fifty cents (\$37.50), together with its costs about the prosecution of its suit in this Court incurred, to be taxed by the Clerk of this Court, and leave is given said complainant to sue out execution therefor from the Clerk's office. And it is *further ordered* that a service of a copy of this order upon the defendant, Opera Pharmacy, or its attorney of record in this cause, shall be due and sufficient notice of this injunction, and this cause is ordered dropped and dismissed from the docket, but with leave to the

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complainant upon motion to have the same reinstated at any time to invoke the process of this Court for the enforcement of the injunction awarded or the punishment of any violation thereof, or for further and appropriate relief which may be necessary to fully protect the rights of the complainant as adjudicated herein.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF WEST VIRGINIA. } ss.

I, Ira H. Mottesheard, Clerk of the District Court of the United States for the Southern District of West Virginia, do certify that the foregoing is a true copy from the record of an order entered on the 22nd day of October, 1915, and 30th day of November, 1915, in the cause of The Coca-Cola Company, a corporation, v. Opera Pharmacy, a corporation, and now of record and on file in my office.

In Testimony Whereof I hereto set my hand and the seal of said Court, at Charleston, in said District, this 25th day of August, A. D. 1922, and in the 147th year of the Independence of the United States of America.

(Seal) IRA H. MOTTESHEARD, Clerk,
D. C. U. S. S. D. W. Va.

Candler, Thomson & Hirsch, Atlanta, Ga.; Mollohan, McClintie & Mathews, Charleston, W. Va., for Complainant.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF KENTUCKY

ENTERED SEPTEMBER 25, 1914

No. 2924—IN EQUITY

THE COCA-COLA COMPANY, a Corporation
under the laws of the State of Georgia,
Complainant,

v.

NEWPORT MINERAL WATER COMPANY, a Cor-
poration organized and existing under the laws
of the State of Kentucky, Defendant.

FINAL DECREE.

This cause came on to be further heard at this term and it appearing that a decree *pro confesso* was taken by complainant herein on August 22, 1914, and that no proceedings have been taken by the defendant to set aside said decree, now upon motion of Murray Seasongood, solicitor for complainant, and upon consideration of the foregoing, it is *ordered, adjudged and decreed* as follows, viz.:

That the defendant, Newport Mineral Water Company, a corporation organized and existing under the laws of the State of Kentucky, its officers, agents, employes, privies and all persons whatsoever be and they are hereby *perpetually enjoined, prohibited and commanded to refrain* from bottling or selling Gay-Ola or other beverage of the same or substantially

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the same color as Coca-Cola, in any bottle, or with any crown, substantially similar in size, shape, color or lettering or general appearance, to the bottle or crown in which complainant bottles and sells its product; from bottling or selling Gay-Ola or other beverage of substantially the same color as Coca-Cola, except in a long-necked, clear-glass bottle, having two complete annular ribs and two partially complete annular ribs blown in the body of the bottle and having the word "Gay-Ola" in large capital letters blown in the shoulder thereof and the words "The Improved Cola" in the body thereof.

Complainant is given leave to apply at any time for an accounting as prayed for in the bill of complaint.

It is *further ordered* that complainant recover its costs of the defendant.

A. M. J. COCHRAN,
Judge.

THE UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF KENTUCKY. } ss.

I, J. W. Menzies, Clerk of the United States District Court for the Eastern District of Kentucky, at Covington, do hereby certify that the foregoing is a true and correct copy of the Final Decree in the matter set out in the caption hereto, as the same appears from the records and files of this office.

Witness my hand as Clerk and the seal of said Court, at Covington, Ky., this 25th day of September, 1922, and of the Independence of the United States of America the 147th year.

J. W. MENZIES, Clerk,
(Seal) By J. A. BODKIN, D. C.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Paxton, Warrington & Seasongood*, Cincinnati, Ohio, for Complainant.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION

No. 12—IN EQUITY

THE COCA-COLA COMPANY, a Corporation,
Complainant,

v.

THE HOTEL RAND COMPANY, a Corporation,
and GEORGE EGNER, Defendants.

FINAL DECREE.

This cause came on to be heard further at this term, and it appearing that a decree *pro confesso* was taken by complainant herein on October 13, 1913, and that no proceedings have been taken by defendants to set aside said decree and that the complainant desires to and does dismiss its bill against the defendant, The Hotel Rand Company, now, upon motion of *Murray Seasongood*, solicitor for complainant, and upon consideration of the foregoing, it is *ordered, adjudged and decreed* as follows, viz.:

That the defendant, George Egner, his agents, employes, associates and each and every person connected with his business be and they are hereby *perpetually enjoined, prohibited and commanded to refrain*:

From in any way or manner selling or dispensing the drink and beverage known as Gay-Ola in place of and for the drink known as Coca-Cola;

From selling or dispensing Gay-Ola when Coca-Cola is asked or called for;

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From in any way or manner selling or dispensing any other syrup, drink or beverage of the same or substantially the same color, consistency and general appearance as Coca-Cola, in place of or for Coca-Cola, or when said Coca-Cola is asked or called for;

From in any way or manner selling or dispensing said Gay-Ola in glasses or similar receptacles, so long as said syrup, drink or beverage Gay-Ola shall have its present color, consistency and general appearance, or shall have the same or substantially the same color, consistency and general appearance of Coca-Cola;

From disposing of Gay-Ola of the same or substantially similar color to Coca-Cola, except when the same is sold in bottles, receptacles or packages marked or labeled prominently with the name Gay-Ola, and designed and intended to be sold and delivered to the ultimate consumer in said original bottle, receptacle or package with said mark or label still remaining thereon.

It is *further ordered* that the complainant recover its costs of the defendant, George Egner.

Entered by JUDGE HOLLISTER, April 4, 1914.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Paxton, Warrington & Seasongood*, Cincinnati, Ohio, for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN
DISTRICT OF KENTUCKY

THE COCA-COLA COMPANY, Complainant,

v.

JOHN G. EPPING, JOHN W. BLACK, JOHN G.
EPPING BOTTLING WORKS, Defendants.

DECREE.

Comes the complainant, The Coca-Cola Company, and the defendants, John G. Epping, John G. Epping Bottling Works and John W. Black, and by agreement, this action is submitted in chief on the verified allegations of the complainant, and the Court being sufficiently advised, it is *considered, ordered and decreed*:

That the defendants, John G. Epping, John G. Epping Bottling Works and John W. Black, their agents, servants and employes, and each of them, be and they are hereby *enjoined*:

1. From marketing, selling or substituting as and for Coca-Cola any product that is not the Coca-Cola product manufactured by the complainant company.

2. From selling or exposing for sale any beverage other than the product Coca-Cola manufactured by the complainant and having the peculiar and distinctive color and appearance of its product or any such approximation thereof as likely may deceive the public, without such differentiation in the name and labeling the containers thereof as will effectually prevent the passing off of a spurious product as and for the product of the complainant.

3. From selling out their own product in barrels or other containers upon which the name of the

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Coca-Cola Company in any wise appears or the name of any other products of the Coca-Cola Company appears without first removing any and all such distinguishing marks from the barrels or other containers.

4. That the plaintiff, in lieu of an accounting, recover of the defendants, John G. Epping, John G. Epping Bottling Works and John W. Black, the sum of One Hundred (\$100) Dollars, and the costs of this proceeding.

5. This action is reserved for such further and other orders and proceedings as may be necessary to uphold and enforce this decree.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Selligman & Selligman, Louisville, Kentucky, for
Complainant.

IN THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION

No. 4916—IN EQUITY

THE COCA-COLA COMPANY, Complainant,
v.
LA SALLE CANDY SHOP, Incorporated, Defendant.

FINAL DECREE.

Now this day the parties hereto consenting to the entry of this final decree, as evidenced by their stipulation hereto attached and herewith filed, the Court doth

Order, Adjudge and Decree that the defendant LaSalle Candy Shop, Incorporated, its officers, shareholders, agents, servants and employees and each of them be and they are hereby *forever and perpetually enjoined and restrained*

(a) From infringing upon the trade rights of plaintiff described in the bill of complaint;

(b) From selling and delivering, in response to calls for Coca-Cola, any beverage other than that made from the Coca-Cola syrup manufactured by plaintiff.

(c) From using the name Coca-Cola or any other name sufficiently similar to the name Coca-Cola, as to cause deceit.

(d) From selling or exposing for sale, any beverage other than plaintiff's product, Coca-Cola, having the peculiar and distinctive color and appearance of plaintiff's product, or any such approximation

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thereof, as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of a spurious product as and for the product of plaintiff.

(e) That there shall be no accounting of profits or damages herein, the same being waived by plaintiff.

(f) That plaintiff have and recover of defendant LaSalle Candy Shop, Incorporated, its costs herein, to be taxed by the Clerk under the direction of the Court and that execution issue therefor.

Dated at St. Louis, Missouri, this 25th day of September, 1918.

DAVID P. DYER,
Judge.

STIPULATION.

The parties hereto hereby consent to the entry of the above and foregoing decree.

Dated at St. Louis, Missouri, this 25th day of September, 1918.

Candler, Thomson & Hirsch, James Love Hopkins,
Attorneys for Plaintiff.

Joseph Block, Attorney for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF KENTUCKY, AT BOWLING GREEN

No. 2—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

OSCAR C. FLETCHER, doing business as FLETCHER
DRUG COMPANY, Defendant.

FINAL DECREE.

Complainant and defendant having this day tendered a stipulation in writing, which is now ordered filed, agreeing that the verified allegations of the bill of complaint are true and consenting that this action may be now finally submitted to the Court upon the bill of complaint and said stipulation, and the Court now being sufficiently advised, it is *ordered, considered and adjudged* that the defendant, Oscar G. Fletcher, doing business as the Fletcher Drug Company, its agents, servants and employes and each of them be and they are hereby *enjoined*:

1. From infringing upon the trade rights of the Coca-Cola Company, as in the Bill of Complaint described, and from the further commission of the acts of substitution as therein described.

2. From selling and delivering in response to requests of orders for Coca-Cola any beverage other than that made from the Coca-Cola syrup manufactured by the complainant.

3. From using any name sufficiently similar to the name "Coca-Cola," or any name applied to any drink, as to cause deceit.

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4. From marketing a product of the same identical or similar color as the product of the complainant so as to cause deceit.

5. From selling or exposing for sale any beverage other than the product Coca-Cola, having the peculiar and distinctive color and appearance of its product, or any such approximation thereof as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of a spurious product as and for the product of the complainant.

No accounting of profits or damages in the premises is required of the defendant.

The defendant will pay the costs of this action.

This action is reserved for such further and other orders and proceedings as may be necessary to uphold and enforce this decree.

Entered February 21, 1917.)

A Copy: Attest.

A. C. ARNOLD,
Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF KENTUCKY, AT BOWLING GREEN

No. 2—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

OSCAR C. FLETCHER, doing business as
FLETCHER DRUG COMPANY,
Defendant.

ORDER.

This day appeared the plaintiff, The Coca-Cola Company, by *Alfred Selligman*, its counsel, and moved the Court as follows:

“Now comes the plaintiff and moves the Court for a rule upon the defendant to show cause why he should not be attached for contempt for violation of the injunction heretofore granted in this cause, and for the reason says that on or about the 21st day of February, 1917, a decree was rendered herein enjoining Oscar C. Fletcher, his agents, servants and employes, and each of them:

“1. From infringing upon the trade rights of The Coca-Cola Company as in the bill of complaint described, and from his further commission of the acts of substitution as herein described.

“2. From selling and delivering in response to requests or orders for Coca-Cola any beverage other than that made from the Coca-Cola syrup manufactured by the complainant.

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“3. From using any name sufficiently similar to the name Coca-Cola or any name applied to any drink as to cause deceit.

“4. From marking a product of the same, identical or similar color as the product of the complainant so as to cause deceit.

“5. From selling or exposing for sale any beverage other than the product Coca-Cola having a peculiar and distinctive color and appearance of its product, or any such approximation thereof as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of a spurious product as and for the product of the complainant.

“6. That the said decree is still in force and effect, and a copy of said decree is hereto attached and marked Exhibit ‘A’ and made a part hereof.

“7. That since the issuing of said injunction defendant, in violation of the rights of the plaintiff and of the injunction aforesaid, has sold a product in response to requests for Coca-Cola a beverage other than that made from the Coca-Cola syrup manufactured by the complainant, and that it has further sold a product other than Coca-Cola having a color similar in approximation of the peculiar and distinctive color and appearance of Coca-Cola without such differentiation as will effectually prevent the passing off of a product as and for the product of the complainant to the great and irreparable damage and injury to the complainant.

“Wherefore, complainant prays:

“(a) For an order that a rule be issued on the defendant to appear before this Court to show cause why it should not be committed or fined for contempt for violation of the injunction heretofore ordered and issued in this cause;”

and in support of said motion filed the affidavits of J. F. Wimbish, W. C. Dumas, Franklin S. Chalmers, Charles Howard Candler, C. E. Caspari, William W. Rigsby, B. J. Sells, E. L. Roddy and W. P. Heath.

It is ordered that the above motion be set for hearing in the Federal Court Hall at Louisville, Kentucky, at 10 o'clock a. m., Monday, January 30, 1922, and the Clerk is directed to give notice of said hearing to the defendant by mailing to him at Bowling Green, Kentucky, a certified copy of this order.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF KENTUCKY. } ss.

I, A. G. RONALD, Clerk of the District Court of the United States, for said Western District of Kentucky, do hereby certify the above and foregoing to be a true and complete copy of the order entered in said court, on the 24th day of January, A. D. 1922, in the cause wherein The Coca-Cola Company is the Plaintiff and Oscar C. Fletcher, doing business as Fletcher Drug Company, is the Defendant, as the same appears from the original now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, this 15th day of February, A. D. 1922.

(Sd.) A. G. RONALD, Clerk,
By M. W. BEARD, D. C.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY, AT BOWLING GREEN

THE COCA-COLA COMPANY, Complainant,

v.

OSCAR C. FLETCHER, doing business as
FLETCHER DRUG COMPANY,
Defendant.

Comes the plaintiff, The Coca-Cola Company by *Selligman & Selligman*, its attorneys, and Oscar C. Fletcher, in his own proper person and by *Thomas, Thomas & Logan*, his attorneys, and state:

1. That since motion for the issuing of a rule herein the defendant has paid to the complainant the sum of \$250.00 which has been accepted in lieu of an accounting which may be due by the defendant to the Complainant to this date for a violation of the said injunction entered herein.

2. The complainant and the defendant respectfully submit this matter to the Court, the complainant stating that any nominal fine which it may please the Court to enter for the violation of the injunction herein, carrying with it the costs of this proceeding will be satisfactory to the said complainant.

3. The original decree entered herein shall continue in full force and effect, and this action shall be reserved for such further and other orders and proceedings as may be necessary to uphold and enforce the said original decree.

Candler, Thomson & Hirsch, Selligman & Selligman, Attorneys for Complainant.

Oscar C. Fletcher.

Thomas, Thomas & Logan, Attorneys for Defendant.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF KENTUCKY. } ss.

I, A. G. RONALD, Clerk of the District Court of the United States, for said Western District of Kentucky, do hereby certify the above and foregoing to be a true and complete copy of the Agreement entered in said court, on the 30th day of January, A. D. 1922, in the cause wherein The Coca-Cola Company is the Complainant and Oscar C. Fletcher, doing business as Fletcher Drug Company the Defendant, as the same appears from the original now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 21st day of February, A. D. 1922.

A. G. RONALD, Clerk,
By M. W. BEARD, D. C.

THE COCA-COLA COMPANY

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF KENTUCKY

THE COCA-COLA COMPANY, Complainant,
v.
OSCAR C. FLETCHER, Defendant.

ORDER.

The parties have agreed that the defendant pay to complainant the sum of \$250 in lieu of an accounting to this date and agreeing that the costs of this case be paid by defendant, it is *ordered* that the motion for said rule be dismissed, that defendant pay the costs of this proceeding; that this action be retained for such further rules and orders as may be necessary to enforce the original decree herein which is continued in full force and effect.

WALTER EVANS, Judge.

Seen: *Thomas, Thomas & Logan*, for Defendant.

Candler, Thomson & Hirsch, Selligman & Selligman, for Complainant.

Entered: January 30, 1922.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF KENTUCKY. } ss.

I, A. G. RONALD, Clerk of the District Court of the United States, for said Western District of Kentucky, do hereby certify the above and foregoing to be a true and complete copy of the Order entered in said court, on the 30th day of January, A. D. 1922, in the cause wherein The Coca-Cola Company is the Plaintiff and Oscar C. Fletcher, doing business as Fletcher Drug

v. OSCAR C. FLETCHER

Company is the Defendant, as the same appears from the original now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 15th day of February, A. D. 1922.

A. G. RONALD, Clerk,
By M. W. BEARD, D. C.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DIVISION
OF THE WESTERN DISTRICT OF
TENNESSEE, AT JACKSON

No. 23—IN EQUITY

THE COCA-COLA COMPANY

v.

L. W. BATES.

This cause by consent and agreement of the parties was this day finally heard by the Court upon the entire record in the cause including the written agreement of the parties heretofore filed in the cause as a part of the record, whereupon it is *ordered, adjudged and decreed* by the Court, by and with the consent of the parties to this suit as evidenced by their said written agreement, that the temporary injunction heretofore granted by interlocutory decree of the Court entered in this cause, be and the same is hereby made permanent and that the defendant L. W. Bates be and he is hereby *perpetually enjoined*:

1st. From in any way or manner selling a product as and for Coca-Cola, or in any way or manner passing off any product as and for Coca-Cola, that is not the product of The Coca-Cola Company, the complainant herein:

2nd. From marketing a product with the same identical color so long used by the complainant in marketing its product unless it be distinctly tagged with the name of the real producer, in such manner that the ultimate consumer will be fairly advised that he is not getting complainant's Coca-Cola, but is getting something else, and that if sold in bottles or other containers that the same shall be stamped and

labeled prominently with the name of the product:

3rd. From using a crown upon bottles containing a product other than Coca-Cola as manufactured and sold by complainant, which is decorated with the same character of script so long used by The Coca-Cola Company to designate its product or having thereon a name similar to the name of complainant, or from using any crown so decorated that it will tend to cause confusion and deception to the ultimate consumer:

4th. From selling any product that is not Coca-Cola as and for Coca-Cola when Coca-Cola is called for, and from using said name Coca-Cola as applied to any product except the product of the complainant in this cause:

And that the defendant and all of his associates, salesmen, servants, clerks, agents, workmen, employes and attorneys, and each and every person claiming by, through, or under said defendant, or in any way connected with his business, be *perpetually enjoined and restrained* as aforesaid.

It is *further ordered, adjudged and decreed* by the Court, by and with the consent of the parties, that the complainant The Coca-Cola Company have and recover of the defendant L. W. Bates all the cost of this suit for the collection of which execution is awarded, and further that so much of the Bill as seeks any recovery against the defendant L. W. Bates as damages be and the same is hereby dismissed, without any cost, however, to the complainant as by the agreement of the parties all the cost of the suit is to be paid by the defendant L. W. Bates as above adjudged.

Enter:

McCALL,
Judge.

Above Decree Approved and O. K.

Candler, Thomson & Hirsch, and W. G. Timberlake et al., Solicitors for The Coca-Cola Company.

L. L. Fonville, Solicitor for L. W. Bates.

THE COCA-COLA COMPANY

I, J. SAM JOHNSON, Clerk of the District Court of the United States, for the Western District of Tennessee, do hereby certify that the paper hereto attached is a full, true and correct copy of the original Order making the Temporary Injunction Permanent in said Court as the same now appears of record and upon the files in my office, in the following cause, to wit: The Coca-Cola Company v. L. W. Bates.

In Testimony Whereof, I have hereunto written my name and affixed the Seal of said Court, at my office in the City of Jackson, Tennessee, this 29th day of August, 1922, and of the Independence of the United States the 147th Year.

(Seal)

J. SAM JOHNSON, Clerk.

AUTHENTICATION.

I, J. W. Ross, a Judge of said Court, do hereby certify that J. Sam Johnson, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, Clerk of said Court and that his attestation is in due form.

J. W. Ross,
Judge of the District Court of the
United States for the District
aforesaid.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DIVISION
OF THE WESTERN DISTRICT OF
TENNESSEE, AT JACKSON

No. 23—IN EQUITY

THE COCA-COLA COMPANY

v.

L. J. BATES.

This cause by consent and agreement of the parties was this day finally heard by the Court upon the entire record in the cause including the written agreement of the parties heretofore filed in the cause as a part of the record, whereupon it is *ordered, adjudged and decreed* by the Court, by and with the consent of the parties to this suit as evidenced by their said written agreement, that the temporary injunction heretofore granted by interlocutory decree of the Court entered in this cause, be and the same is hereby made permanent and that the defendant L. J. Bates be and he is hereby *perpetually enjoined*:

1st. From in any way or manner selling a product as and for Coca-Cola, or in any way or manner passing off any product as and for Coca-Cola, that is not the product of The Coca-Cola Company, the complainant herein:

2nd. From marketing a product with the same identical color so long used by the complainant in marketing its product unless it be distinctively tagged with the name of the real producer, in such manner that the ultimate consumer will be fairly advised that he is not getting complainant's Coca-Cola, but is getting something else, and that if sold in bottles or other containers that the same shall be stamped and labeled prominently with the name of the product;

THE COCA-COLA COMPANY

3rd. From using a crown upon bottles containing a product other than Coca-Cola as manufactured and sold by complainant, which is decorated with the same character of script so long used by the Coca-Cola Company to designate its product or having thereon a name similar to the name of complainant, or from using any crown so decorated that it will tend to cause confusion and deception to the ultimate consumer;

4th. From selling any product that is not Coca-Cola as and for Coca-Cola when Coca-Cola is called for, and from using said name Coca-Cola as applied to any product except the product of the complainant in this cause.

And that the defendant and all of his associates, salesmen, servants, clerks, agents, workmen, employes and attorneys, and each and every person claiming by, through or under said defendant, or in any way connected with his business, be *perpetually enjoined and restrained* as aforesaid.

It is *further ordered, adjudged and decreed* by the Court, by and with the consent of the parties, that the complainant The Coca-Cola Company have and recover of the defendant L. J. Bates all the cost of this suit for the collection of which execution is awarded and further that so much of the bill as seeks any recovery against the defendant, L. J. Bates, as damages be and the same is hereby dismissed, without any cost, however, to the complainant as by the agreement of the parties all the cost of the suit is to be paid by the defendant L. J. Bates as above adjudged.

Enter:

McCALL.

Above Decree Approved and O. K.

Candler, Thomson & Hirsch, and W. G. Timberlake et al., Solicitors for The Coca-Cola Company.

L. L. Fonville, Solicitor for L. J. Bates.

v. L. J. BATES

I, J. SAM JOHNSON, Clerk of the District Court of the United States, for the Western District of Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect and correct copy of the original order making the Temporary Injunction Permanent in said Court as the same now appears of record and upon the files in my office, in the following cause, to wit:

The Coca-Cola Company

v.

L. J. Bates.

In Testimony Whereof, I have hereunto written my name and affixed the Seal of said Court, at my office in the City of Jackson, Tennessee, this 29th day of August, A. D. 1922, and of the Independence of the United States the 147th Year.

J. SAM JOHNSON, Clerk.

AUTHENTICATION.

I, J. W. Ross, a Judge of said Court, do hereby certify that J. Sam Johnson, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, Clerk of said Court and that his attestation is in due form.

J. W. Ross,

Judge of the District Court of the
United States for the District
aforesaid.

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF
NEBRASKA, OMAHA
DIVISION

No. 474—IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,
v.
W. W. YAGER, trading as CURO MINERAL
SPRINGS COMPANY, Defendant.

FINAL DECREE.

CANDLER, THOMSON & HIRSCH,
KENNEDY, HOLLAND, DELACY & McLAUGHLIN,
Solicitors for Plaintiff.

MURPHY & WINTERS,
Solicitors for Defendant.





IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF
NEBRASKA, OMAHA DIVISION

No. 474—IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

W. W. YAGER, trading as CURO MINERAL
SPRINGS COMPANY, Defendant.

FINAL DECREE.

This cause coming on for final hearing (the defendant consenting thereto), it is *Ordered, Adjudged and Decreed* as follows:

I.

That the Court has jurisdiction of the subject matter and of the parties to this suit.

II.

That the word "Coca-Cola" is a valid trade-mark of which the plaintiff is the sole owner.

III.

That plaintiff alone is entitled to use the trade-mark "Coca-Cola" and that its goods alone can lawfully be sold under that name.

IV.

That The Coca-Cola Company, a Georgia corporation, then being the owner of the trade-mark "Coca-Cola," duly registered its said trade-mark under and in conformity with the Act of Congress, approved March 3, 1891, entitled: "An Act to authorize the registration of trade-marks and to protect the same," and under the Act of Congress of February 20, 1905, entitled: "An Act to authorize the registration of

THE COCA-COLA COMPANY

trade-marks used in commerce with foreign nations or among the several states or with Indian tribes and to protect the same"; that said registrations, numbered 22,406 and 47,189, respectively, are valid and subsisting and, in connection with the business and good will, by proper assignments duly recorded, as provided by law, became and now are the sole property of the plaintiff, and that the plaintiff is entitled to the rights and remedies provided in said statutes.

V.

That the words "Curo-Cola," "Curo" and "Cola," adopted and used by defendant in connection with merchandise sold by him, are infringements of plaintiff's said trade-mark "Coca-Cola," are copies or colorable imitations thereof within the meaning of the Act of Congress of February 20, 1905; and that the defendant has affixed one or more of said copies or colorable imitations to merchandise of substantially the same descriptive properties as those set forth in plaintiff's said registrations, and has used one or more of said copies or colorable imitations in commerce among the several states of the United States, and that defendant thereby has infringed plaintiff's said registered trade-mark.

VI.

That defendant has applied to packages containing his said product, decorated crowns with a color scheme and script lettering thereon so nearly resembling the distinctive decorated crowns of the plaintiff, that defendant thereby has competed unfairly with the plaintiff.

VII.

That the said defendant, W. W. Yager, his agents, servants, employes, attorneys, assigns and licensees, and all acting by or under his authority be, and the same hereby, each and all are *perpetually enjoined and restrained* from using or employing, in connection with advertising, or offering for sale, or sale of any beverage or ingredient thereof, plaintiff's trade-

mark "Coca-Cola" or any like word, or the colorable imitation thereof "Curo-Cola" or any like word, or the colorable imitation thereof "Curo" or any like word, or the colorable imitation thereof "Cola" or any like word, and from using script lettering identical with or like the script lettering used by the plaintiff or defendant (upon beverages or ingredients of beverages of the same descriptive properties as the beverages of plaintiff), and from selling or offering for sale, furnishing or supplying, in response to requests for Coca-Cola, any product, not the plaintiff's, to requests for Coca-Cola, and further, from doing any act or thing, or using any name, artifice or contrivance which may be calculated or likely to cause any product not the plaintiff's to be sold as and for the product of plaintiff; and especially from using any bottles bearing the imprint of the trade-mark "Coca-Cola"; and that a writ of perpetual injunction issue accordingly.

VIII.

That the plaintiff is entitled to have and recover of and from the said defendant, the profits derived by said defendant by reason of his infringements and unfair competition herein restrained, and for the damages sustained by the plaintiff by reason thereof, and said plaintiff electing to waive said accounting of damages and profits, the Court finds the sum of \$1.00 in lieu thereof, and it is further *Ordered, Adjudged and Decreed* that plaintiff do have and recover of and from said defendant the said sum of \$1.00, together with the costs of this suit to be taxed, and have execution therefor, attorneys' docket fee being waived not to be taxed.

Enter this 20th day of November, 1922.

J. W. WOODROUGH,
United States District Judge.

THE COCA-COLA COMPANY

We consent to the entry of this decree:

*Candler, Thomson & Hirsch, Kennedy, Holland,
DeLacy & McLaughlin*, Solicitors for Plaintiff.

Murphy & Winters, Solicitors for Defendant.

UNITED STATES OF AMERICA, }
DISTRICT OF NEBRASKA, }
OMAHA DIVISION. } ss.

I, R. C. HOYT, Clerk of the United States District Court for the District of Nebraska, do hereby certify that the foregoing is a true and correct copy of the original thereof, which original is now in my custody as such Clerk.

Witness my hand as Clerk, and the seal of said Court, at Omaha, Nebraska, this 20th day of November, 1922.

R. C. HOYT, Clerk,
JOHN NICHOLSON, Deputy.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF MISSISSIPPI

No. 134—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

J. T. MASON and GEORGIANA A. MASON, doing
business as CORNER DRUG STORE,
Defendants.

This cause came on to be heard at this term and was argued by counsel for complainant, and thereupon, upon consideration thereof, it was *ordered, adjudged and decreed* as follows, viz.:

That the complainant has the sole and exclusive right to the use of the trade-mark or trade name, "Coca-Cola" in connection with a drink or beverage; that the question of the amount of damages is not decided, but is expressly left open for determination in a separate suit should complainant desire its claim pressed therefor; that the defendants, their associates, salesmen, servants, clerks, agents, workmen, employees, attorneys, and each and every person claiming by or through said defendants be and they are hereby *enjoined and restrained* from infringing upon the trade-mark "Coca-Cola" and the trade rights of complainant set out in the bill of complaint and from the further commission of the acts of substitution complained of in the bill of complaint filed in this cause, and from applying to any syrup not manufactured by complainant the name "Coca-Cola" or any other word or words of like sound or import and from selling and delivering in response to requests or orders for Coca-Cola any beverage other than that made from the "Coca-Cola" syrup manufactured by complainant and from using any name sufficiently similar to the name "Coca-Cola" to cause

THE COCA-COLA COMPANY

deceit, and from marketing a product of the same identical or similar color so long used by complainant in marketing its product as set out in said bill of complaint and shown by the proof; and from selling or exposing for sale any beverage other than complainant's product "Coca-Cola" having the same peculiar and distinctive appearance and color of complainant's said product or any such approximation thereof as may be likely to deceive the public, without such differentiation as will effectually prevent the passing off of a spurious product as and for the said product of the complainant, and from marketing a product with the same identical or similar color as that used by the complainant in marketing its product when the customer asks for Coca-Cola, the product of complainant, whether the request is made for Coca-Cola in its proper name, "Coca-Cola", or in any other name or designation commonly applied to the said product of complainant and intended to designate the same.

It is *further ordered, adjudged and decreed* that the complainant, The Coca-Cola Company, a corporation, do have and recover of and from the defendants, J. T. Mason and Mrs. Georgiana Mason, doing business as Corner Drug Store, all costs of this suit, including the costs of the taking of the depositions on file in this cause, for which let execution issue.

So *ordered, adjudged and decreed* by the Court on this the 15th day of February, A. D. 1915.

H. C. NILES,
Judge.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
SOUTHERN DIVISION. } ss.

In Equity.

I, JACK THOMPSON, Clerk of the District Court of the United States for the Southern District of

Mississippi, hereby certify that the foregoing attached ten and a half typewritten pages are full, true and correct copies of the originals on file and of record in my office at Biloxi, in the southern division of said district.

Given under my hand and seal of said District Court, at Biloxi, in said District, on the 22nd day of August, A. D. 1922.

(Seal)

JACK THOMPSON, Clerk,
By GEO. P. MONEY, D. C.

Candler, Thomson & Hirsch, Atlanta, Ga.; Stevens & Cook, Hattiesburg, Miss., for Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF TEXAS, AT TYLER, TEXAS

JANUARY 29, 1918

THE COCA-COLA COMPANY

v.

WEEKS & WEAVER, a partnership composed of the
sole partner of J. M. Weeks.

It being made to appear to the Court the parties
hereto have entered into the following stipulations,
to wit:

“THE COCA-COLA COMPANY v. J. M. WEEKS	”	“IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EAST- ERN DISTRICT OF TEXAS, AT TYLER, TEXAS. JANUARY 29, 1918.
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“It Is Hereby Stipulated by and between the parties, plaintiff and defendant, in the above styled cause, that the plaintiff may have its decree against the defendant as prayed for, with the exception that no decree will be entered for damages. This stipulation will be treated as an appearance and to fully authorize the decree above-mentioned to be entered in favor of plaintiff and against the defendant.”

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the defendant, John M. Weeks, his agents, servants, employes, successors and assigns, and each and all of them be, and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertising, offering for sale, or selling any beverage with the words “Coca-Cola,” or any like word or words, whether

alone or in connection with other words or names, and further from doing any act or thing, or using any name or names, contrivances, artifices, or device, which may be calculated to lead or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola.

It Is Further Ordered, Adjudged and Decreed by the Court that the plaintiff pay all costs of Court for which the officers of this Court may have their execution.

GORDON RUSSELL, Judge.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Crane & Crane, Dallas, Texas; *H. O. Head*, Sherman,
Texas, for Complainant.

THE COCA-COLA COMPANY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF NORTH CAROLINA

IN EQUITY

COMPLAINT

THE COCA-COLA COMPANY, Plaintiff,

v.

LEE J. TAYLOR, doing business as CROWN
BOTTLING WORKS, Defendant.

DECREE.

This cause came on to be heard at this Term, and by consent of defendant hereto, upon motion of counsel for plaintiff, it is *adjudged, ordered and decreed* as follows:

1. That the complainant herein is the owner of the trade-mark Coca-Cola, which said mark is a valid trade-mark belonging to said complainant.

2. It is further *adjudged, ordered and decreed* that the defendant, his associates, successors, assigns, officers, servants, clerks, agents and workmen, and each of them, be and they are *perpetually enjoined*:

(a) From using said trade-mark Coca-Cola, or any colorable imitation thereof in any form whatsoever, except as authorized and assented to by the complainant herein.

(b) From in any way, manner or form using the Coca-Cola syrup which is made for fountain purposes, for bottling purposes, and from in any way

using the name Coca-Cola, or any colorable imitation thereof, as applied to any soft drink or beverage, in bottles.

(c) From using the trade-mark Coca-Cola, or any colorable imitation thereof, without the authority of the complainant, and from using said trade-mark Coca-Cola, or any colorable imitation thereof, on bottles containing the fountain syrup manufactured by complainant; and from using said trade-mark Coca-Cola, or any colorable imitation thereof, in connection with any product that is not the product of your orator; and that the defendant, his associates, successors, assigns, officers, servants, clerks, agents and workmen be likewise *perpetually enjoined* from putting out, selling or offering for sale, directly or indirectly, any soft drink or beverage under the name Coca-Cola, or any colorable imitation thereof, without the authority and permission of the Company or its agents, and from using the word Coca-Cola, or any colorable imitation thereof, in connection with the sale of any beverage without the consent of the complainant herein.

(d) That by consent of the parties to said cause this injunction is hereby made perpetual.

(e) That by consent of the parties to said cause this injunction shall take effect immediately upon the date hereof; this decree to be entered and enrolled as of April Term, 1913.

(f) That the plaintiff do recover against the defendant the costs of the suit to be taxed by the clerk.

This 7th day of February, 1913.

(Signed) H. G. CONNOR,

Judge of the District Court for the Eastern District of North Carolina.

Consented to:

Candler, Thomson & Hirsch, Charles R. Thomas,
Solicitors for Plaintiff Coca-Cola Company.

Lee J. Taylor, Crown Bottling Works, Defendant.

THE COCA-COLA COMPANY

I, GEO. GREEN, Deputy Clerk of the District Court of the United States within and for the District aforesaid, do hereby certify that the foregoing is a true and correct copy of the decree in the case of The Coca-Cola Company, Plaintiff, v. Lee J. Taylor, doing business as Crown Bottling Works, Defendant, as filed in said court.

In Testimony Whereof, I hereunto set my hand and affix the seal of the said court at New Bern, this 11th day of February, 1913.

(Seal)

GEO. GREEN,
Deputy Clerk of the District Court
of the United States for the Eastern
District of North Carolina.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIVISION
OF THE SOUTHERN DISTRICT
OF MISSISSIPPI

THE COCA-COLA COMPANY
v.
SOUTHERN BOTTLING WORKS.

DECREE.

It appearing that the defendant is erroneously described in the bill of complaint as the "Southern Bottling Company," and that its true and correct name is the "Southern Bottling Works," and this appearing from a motion filed herein by the Southern Bottling Works on July 23, 1915, to dismiss the bill of complaint herein for certain causes therein stated, and the said motion having been duly set down for hearing;

It Is Ordered that the bill of complaint be amended so that the defendant thereto shall be described as the "Southern Bottling Works," instead of the "Southern Bottling Company;" and the said motion to dismiss coming on to be heard, it is *ordered and adjudged* that the same be and is hereby overruled.

And the defendant, the said Southern Bottling Works, having declined to answer said bill or plead further herein, it is *ordered* that the said bill of complainant be and it is hereby taken for confessed as against the said defendant, the Southern Bottling Works.

It is thereupon *ordered, adjudged and decreed* that the complainant, The Coca-Cola Company, has the sole and exclusive right to the use of the mark or

THE COCA-COLA COMPANY

name "Coca-Cola" in connection with a drink or beverage, and also that The Coca-Cola Company has the sole and exclusive right to the use of the mark or name "Coca-Cola" as a trade-mark.

And it is *further ordered, adjudged and decreed* that the defendant, the Southern Bottling Works, its officers, agents, servants, employes, successors, and assigns, each and all of them be and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertisement, offering for sale or sale of any beverage the words "Coca-Cola" either alone or in connection with other words or names, and further from doing any act or thing, or using a name or names, contrivance, artifice or device, which might be calculated to represent or induce the belief that any bottled product not authorized by complainant is "Coca-Cbla."

And the complainant consenting thereto, it is *ordered* that it pay the costs accrued in this cause to be taxed, etc.

So *ordered and decreed* this the 14th day of January, 1918.

H. C. NILES, Judge.

I, JACK THOMPSON, Clerk of the said United States District Court, in and for the said Southern District of Mississippi, do hereby certify that the above and foregoing is a full, true and correct copy of the original Final Decree in the above-styled matter as fully as the same appears of record and on file in this office.

Witness my hand and the seal of said District Court this the 25th day of February, A. D. 1922.

JACK THOMPSON, Clerk,
J. H. SHORT, D. C.

(Seal)

Candler, Thomson & Hirsch, Atlanta, Ga.; Catchings & Catchings, Vicksburg, Miss., for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DIS-
TRICT OF ILLINOIS

Wednesday, November 3, A. D. 1915

Present: HONORABLE FRANCIS M. WRIGHT, Judge.

THE COCA-COLA COMPANY, Plaintiff,
v.
FRANK SIMMS, Defendant.

FINAL DECREE.

This cause coming on for final hearing upon the verified bill of complaint herein and the answer of said defendant, the said defendant consenting thereto, *It Is Ordered, Adjudged and Decreed* as follows:

That the Court has jurisdiction of this cause and of the parties hereto;

That the plaintiff, Coca-Cola Company, has a valid trade-mark in the words "Coca-Cola" and is entitled to the exclusive use thereof;

That the defendant by his use of the words "Coca-Cola" in connection with a bottled drink not being made, carbonated, bottled and sold under plaintiff's authority and supervision has infringed plaintiff's said exclusive right;

That the allegations of the bill of complaint are true; that the equities of the case are with the plaintiff; and that plaintiff is entitled to the relief prayed;

That defendant, his agents, servants, employes, successors and assigns and each and all of them be,

THE COCA-COLA COMPANY

and the same hereby are *perpetually enjoined and restrained* from using in connection with the manufacture, advertisement, offering for sale or sale of any beverage, the words "Coca-Cola" or any like word or words, whether alone or in connection with other words or names; and further, from doing any act or thing or using any name or names, contrivance, artifice or device which may be calculated to represent or induce the belief that any bottled product not authorized by plaintiff is Coca-Cola, and that a writ of perpetual injunction issue accordingly.

That plaintiff is entitled to recover of and from the said defendant the damage suffered by it from defendant's infringement of plaintiff's trade-mark, and the profits and gains acquired by defendant by reason thereof. But it appearing to the court that the matter of such damages and profits has been agreed upon between the parties, no order is made with respect thereto.

And It Is Further Ordered, Adjudged and Decreed that plaintiff is entitled to recover of and from the said defendant the costs of this suit to be taxed and have execution therefor.

This decree as to damages, profits and costs paid and satisfied in open court, this 3rd day of November, 1915.

Candler, Thomson & Hirsch, Charles Troup, Solicitors for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF TEXAS, JEFFERSON DIVISION

No. 69—JEFFERSON

No. 217—TYLER

IN EQUITY

THE COCA-COLA COMPANY, Complainant.

v.

THE JACKSONVILLE BOTTLING WORKS,
Defendant.

FINAL DECREE.

On this the 23rd day of February, A. D. 1916, the above numbered and styled cause came on to be heard on the bill, answer, exhibits and evidence; and the Court after hearing the same and the argument of counsel thereof is of the opinion that the complainant is entitled to the relief prayed for:

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the defendant, The Jacksonville Bottling Works, its servants, agents and employes be, and they hereby are, *enjoined and restrained* from bottling and selling in bottles under the name Coca-Cola applied to any drink, and from using any name sufficiently similar to the name Coca-Cola as applied to any drink, to be calculated to cause a proposed purchaser to mistake the same for the drink Coca-Cola authorized by and prepared and bottled under the contracts between complainant, The Coca-Cola Company and The Coca-Cola Bottling Company and Coca-Cola Bottling Company described in the bill of

THE COCA-COLA COMPANY

complaint, whether the drink so prepared or sold by defendant be made by using the syrup manufactured by complainant for use at fountains commonly known as fountain syrup or otherwise, the said defendant being enjoined and restrained, from manufacturing and from selling and offering for sale any drink of any kind whatever under the name of or as Coca-Cola, the complainant being adjudged and decreed to own, and be entitled to, said name Coca-Cola as a trade-mark for the protection of the drink made from its bottling syrup and bottled and sold under its authority as Coca-Cola, and that a drink made from what is termed in the bill of complaint as fountain syrup, and bottled and sold as Coca-Cola is and would be a violation of such trade-mark.

It Is Further Ordered and Decreed that complainant do have and recover from the defendant all costs in this behalf incurred, from which execution may issue.

To which action and ruling of the Court the defendant in open Court excepted and prayed and appealed to the Circuit Court of Appeals which is hereby allowed, and the Clerk is ordered to enter this order of record at the Jefferson Division of the Court.

(Signed) GORDON RUSSELL, Judge.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Crane & Crane, Dallas, Texas, for Complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT
OF TEXAS, AT TEXARKANA

THE COCA-COLA COMPANY, Complainant,

v.

DAN GALLAGHER, doing business under the firm
name and style of DAN GALLAGHER BOT-
TLING COMPANY, Defendant.

November 5, 1917.

DECREE.

This cause this day coming on to be heard and being regularly reached on call of the docket, comes the complainant, by its Solicitors, *Candler, Thomson & Hirsch* and *James D. Head*, and comes also the defendant Dan Gallagher, doing business under the firm name and style of Dan Gallagher Bottling Company, by his Solicitors, *Mahaffey, Keeney & Dalby*, and thereupon this cause is submitted to the Court upon the Stipulation for Decree herein duly filed this day, and upon consideration of said stipulation herein duly filed and duly signed by solicitors for both complainant and defendant, the court is of the opinion that decree should be entered in accordance with the said stipulation.

It is, therefore, *considered, ordered, adjudged and decreed* that the complainant is the sole owner of the trade-mark, "Coca-Cola"; that the said trade-mark has been duly registered; that the said trade-mark is in all respects good and valid.

That the said complainant is entitled to the sole and exclusive use of the said trade-mark, "Coca-Cola", upon syrup manufactured and marketed by

THE COCA-COLA COMPANY

it, whether bottled syrup or bulk syrup, adapted to make a beverage by mixing with carbonated water at soda fountains, and both called "Coca-Cola".

That the said Dan Gallagher, doing business under the firm name and style of Dan Gallagher Bottling Company, has heretofore wrongfully used the said trade-mark in the making and sale of certain products put up, bottled or manufactured by him in contravention of the rights of the complainant to the sole and exclusive use of said term.

It is *further considered, ordered, adjudged and decreed* that the said Defendant, Dan Gallagher, doing business under the firm name and style of Dan Gallagher Bottling Company, his agents, servants, employees, successors, and assigns and each and all of them be and they are hereby *perpetually enjoined and restrained* from using in connection with the manufacture, advertisement, offering for sale, or sale, of any beverage the words, "Coca-Cola", or any like word or words, whether alone or in connection with other word or words, or name, and further from doing any act or thing or using any name or names, contrivance, artifice, or device, which may be calculated to induce the belief that any product not authorized by the Complainant, is "Coca-Cola."

It is *further considered, ordered, adjudged and decreed* that the complainant recover nothing on account of profits, gains, or advantages received by the defendant heretofore on account of the wrongful use of said trade-mark, in accordance with the stipulation herein filed, and that the complainant pay all of the costs of this action.

Candler, Thomson & Hirsch, Atlanta, Ga.; *J. D. Head*, Texarkana, Arkansas, for Complainant.

Mahaffey, Keeney & Dalby, for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF WEST VIRGINIA

No. 1136—IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,
v.
LILY ICE & BOTTLING WORKS, Defendant.

The parties hereto consenting: *It Is Decreed and Adjudged* that The Coca-Cola Company has the sole and exclusive right to the use of the mark Coca-Cola in connection with a syrup, a drink or a beverage.

It Is Ordered, Adjudged and Decreed that the defendant, Lily Ice & Bottling Works, its agents, servants, employes, successors and assigns and each and all of them and every person claiming or holding under or through them or in any way connected with their business, are hereby *perpetually enjoined and restrained* from in any manner making or selling their product in such a way as to pass off the same as and for the product of The Coca-Cola Company, and from using in any form whatsoever the name Coca-Cola as applied to any drink, or from using any name sufficiently similar to the name Coca-Cola as applied to any drink so as to cause deceit, and from doing any acts in any manner or form in the premises as is calculated to deceive, and they are especially *perpetually enjoined and restrained* from using the name Coca-Cola in connection with any bottled beverage, and from using any bottles, containers, stoppers, crowns, labels, boxes or advertising matter with the name Coca-Cola thereon.

It Is Further Ordered that the defendant, Lily Ice & Bottling Works, pay all the costs accrued in this

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case and that the plaintiff recover of and from said Lily Ice & Bottling Works the costs of this suit to be taxed, and have execution therefor.

This 15th day of September, 1921.

We agree to the entering of the above decree:

(Signed) LILY ICE & BOTTLING WORKS,
By *W. W. Goldsmith*, of Counsel for Defendant.

THE COCA-COLA COMPANY,
By *W. H. File*, of Counsel for Plaintiff.

Candler, Thomson & Hirsch, Atlanta, Ga., General Counsel, The Coca-Cola Company.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF WEST VIRGINIA. } ss.

I, ALBERT V. FITZWATER, Clerk of the District Court of the United States for the Southern District of West Virginia, do certify that the foregoing is a true copy of the final decree entered in the case of The Coca-Cola Company v. Lily Ice & Bottling Works, and now of record and on file in my office.

In Testimony Whereof I hereto set my hand and the seal of said Court, at Charleston, in said District, this 19th day of September, A. D. 1921, and in the 146th year of the Independence of the United States of America.

(Seal) (Signed) ALBERT V. FITZWATER, Clerk,
D. C. U. S. S. D. W. Va.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT
OF OHIO, EASTERN DIVISION

No. 748—IN EQUITY

THE COCA-COLA COMPANY, Complainant,

v.

E. L. CALDWELL, Defendant.

FINAL DECREE.

The within cause coming on for hearing and by and with the consent of all parties or their counsel, it is *considered, ordered and decreed*:

First: That this Court has jurisdiction of the subject matter and of the parties to this suit.

Seconds That the word Coca-Cola is a valid trade-mark, of which plaintiff is the sole owner.

Third: That plaintiff alone is entitled to use the trade-mark Coca-Cola and that only goods manufactured by the plaintiff can lawfully be sold under the name "Coca-Cola."

Fourth: That plaintiff duly registered its trade-mark under and in conformity with the Act of Congress approved March 3, 1881, entitled, "An Act to authorize the registration of trade-marks and to protect the same." Plaintiff and its predecessors also registered the same trade-mark under the Act of Congress of February 20th, 1905, entitled, "An Act to authorize the registration of trade-marks used in commerce with foreign nations and among the several states or with Indian tribes and to protect the same." Said registrations are numbered 22,406 and

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47,189, respectively, and are valid and subsisting, and are the sole property of the plaintiff, and plaintiff is entitled to the rights and remedies provided in the said statutes.

Fifth: That the word “Coca-Cola” as adopted and used by the defendant was and is an infringement of plaintiff’s said trade-mark Coca-Cola and is a copy or colorable imitation thereof within the meaning of the Act of Congress of February 20th, 1905; and that the defendant has affixed said copy or colorable imitation to merchandise of substantially the same descriptive properties as those set out in plaintiff’s said registration, and that defendant has affixed said copy or colorable imitation to labels, signs, prints, stationery, packages, wrappers and receptacles intended to be used and actually used upon and in connection with the sale¹ of merchandise of substantially the same descriptive properties as those set forth in such registrations; and that defendant has used said copy or colorable imitation contrary to the rights of the plaintiff herein; and that defendant thereby has infringed the plaintiff’s said registered trade-mark.

Sixth: That the defendant has used and applied to packages containing its product decorated crowns with a color scheme and script lettering thereon so nearly the same as the distinctive crowns and script lettering authorized and used by the plaintiff as to be substantially indistinguishable therefrom and the defendant has sold his product as and for the product of the plaintiff and thereby has competed unfairly with the plaintiff.

Seventh: That the defendant has purchased syrup as manufactured by plaintiff for use in fountain trade, that such syrup is not manufactured for the purpose of nor is it intended for use in bottling; and defendant has bottled such syrup known as fountain Coca-Cola syrup, and has sold such fountain Coca-

Cola syrup so bottled by him under the name and guise of bottled Coca-Cola in simulation of the bottled Coca-Cola as authorized and licensed by plaintiff to its licensees; that defendant had no authority nor license to bottle and sell such fountain syrup and by such act the defendant thereby has competed unfairly with the plaintiff.

Eighth: That the defendant, E. L. Caldwell, his agents, servants, employees, attorneys, licensees, transferees, successors and assigns, and each and all thereof, and all acting by or under his authority be and are, each and all, *perpetually enjoined and restrained* from using, in the connection with the manufacture, advertisement, offering for sale or sale of any beverage, the names Coke, Coca, Cola, Coca-Cola or any like word or words; or from using or employing or authorizing the use or employment of designs, devices, script lettering or crowns, identical with or like those used by the plaintiff; from using any bottle or crown or other article bearing trade-mark Coca-Cola or like word or words as hereinbefore referred to; and from doing any act or thing or using any name or names, device, artifice or contrivance which may be calculated or likely to cause any product not the plaintiff's to be sold as and for the product of the plaintiff; and that writs of injunction accordingly issue forthwith.

Ninth: The defendant, E. L. Caldwell, in conformity with paragraph two of petition filed by plaintiff, is required, under oath to answer interrogatories set out in said paragraph No. two, sub-paragraph (a) to sub-paragraph (h) inclusive, and to attach thereto as Exhibits the particles prayed for by plaintiff.

Tenth: That all labels, signs, prints, packages, wrappers, bottles or receptacles in possession of the defendants bearing the trade-mark of plaintiff or any colorable imitation thereof, be forthwith delivered up by defendant to solicitors for plaintiff for destruction.

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Eleventh: It is *further ordered* that the defendant, E. L. Caldwell, pay all costs accrued in this case and that the plaintiff recover of and from E. L. Caldwell all the costs of this suit to be taxed and have execution thereon.

This the 27th day of October, 1922.

D. C. WESTENHAVER,
District Judge.

Consented to:

Candler, Thomson & Hirsch, White, Cannon & Speith, Solicitors and of Counsel for Plaintiff.

Roscoe J. Webb, Solicitor and of Counsel for Defendant.

E. L. Caldwell, Defendant, *in propria persona*.

IN THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

NOVEMBER TERM, A. D. 1917

No. 963—IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,
v.
SPANISH CORK AND STOPPER COMPANY,
Defendant.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof and the consent of all parties thereto, it was *ordered, adjudged and decreed* as follows:

That the Court has jurisdiction of the subject matter of the suit and of the parties thereto; that the said defendant, its agents, officers, attorneys, successors, assigns and all persons taking or holding under or through defendant, and each and all thereof, be, and the same are hereby, *perpetually enjoined and restrained* from selling, dealing in, or supplying to any person, firm or corporation any bottle crowns or stoppers or any labels or other material bearing or containing the word "Coca-Cola" or any like word or words either alone or in connection with other words or names, and from further doing any act or thing or contributing or aiding in the doing of any act or thing which may be calculated to represent or induce the belief that any bottled product not made

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or authorized by plaintiff is "Coca-Cola" or the product of plaintiff; Provided, however, that nothing herein contained shall be construed as preventing the defendant, its officers, agents, attorneys, successors or assigns from selling or supplying either to plaintiff or to any person, firm or corporation who are authorized by plaintiff to use the word "Coca-Cola" thereon, bottle stoppers, crowns or labels with the said word "Coca-Cola" on the same; that a writ of injunction issue to the above effect; that the plaintiff having waived an accounting of profits and an assessment of damages by reason of the alleged conduct of the defendant set out in the bill of complaint, that plaintiff in lieu and in full thereof do have and recover from the defendant the sum of One Dollar in full of profits and damages by reason of the alleged conduct of said defendant in said bill of complaint set out and that plaintiff do have and recover from defendant its costs herein to be taxed.

We consent to the entry of the above decree this 5th day of December, A. D. 1917.

Candler, Thomson & Hirsch, Frank F. Reed & Edward S. Rogers, Solicitors for Plaintiff.

Isedore S. Blumenthal, Solicitor for Defendant.

Enter Dec. 7th, 1917.

GEORGE A. CARPENTER,
Judge.

UNITED STATES DISTRICT COURT, FOR
THE SOUTHERN DISTRICT
OF NEW YORK

THE COCA-COLA COMPANY, Complainant,

v.

BERNARD SANDROWITZ, doing business under the trade name and style of COLUMBIA BOTTLING WORKS; JONAS KOWARSKY and JOHN BERNSTEIN (the name John being fictitious, defendant's real name being unknown to complainant), doing business as STANDARD CORK & SEAL CO., Defendants.

This cause coming on to be heard on complainant's motion for a final decree, the complainant appearing by its solicitor *Harry D. Nims*, and the defendant Bernard Sandrowitz appearing in person, and it appearing to the court that the issues involved herein have been settled and agreed upon by the parties hereto, and the defendant Bernard Sandrowitz agreeing to consent to the entry of a final decree in the following form:

Now, on motion of *Harry D. Nims*, solicitor for the complainant, it is

Ordered, Adjudged and Decreed that the defendant Bernard Sandrowitz be and he hereby is *perpetually enjoined and restrained*—

I. From using in any manner whatsoever in the manufacture or sale of beverages, or of bottlers' supplies, the name "Coca-Cola" or any colorable imitation thereof;

II. From the purchase, sale, giving away, or disposing of, in any manner, bottles, caps, stoppers, or crowns, or any bottling supplies, bearing the name "Coca-Cola" or any colorable imitation thereof.

That no accounting of profits and damages is ordered from the defendant Bernard Sandrowitz, this

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injunction being consented to by the said defendant in lieu of and in satisfaction for such damages and profits, and that no costs shall be entered against this defendant.

July 24th, 1914.

LEARNED HAND,
United States District Judge.

I consent to the entry of the foregoing decree:

BERNARD SANDROWITZ.

Candler, Thomson & Hirsch, Atlanta, Ga.; *Harry D. Nims*, New York City, for Complainant.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

THE COCA-COLA COMPANY, Complainant,

v.

BERNARD SANDROWITZ, doing business under the trade name and style of COLUMBIA BOTTLING WORKS; JONAS KOWARSKY and JOHN BERNSTEIN (the name John being fictitious, defendant's real name being unknown to complainant), doing business as STANDARD CORK & SEAL CO., Defendants.

This cause coming on to be heard on complainant's motion for a final decree, the complainant by its solicitor *Harry D. Nims*, and the defendants Jonas Kowarsky and Michael Bernstein appearing in person, and it appearing to the court that the issues involved herein have been settled and agreed upon by the parties hereto, and the defendants Jonas Kowarsky and Michael Bernstein agreeing to consent to the entry of a final decree in the following form:

Now, on motion of *Harry D. Nims*, solicitor for the complainant, it is

Ordered, Adjudged and Decreed that the defendants Jonas Kowarsky and Michael Bernstein be and they hereby are *perpetually enjoined and restrained*—

I. From using in any manner whatsoever in the manufacture or sale of beverages, or of bottlers' supplies, the name "Coca-Cola" or any colorable imitation thereof:

II. From the purchase, sale, giving away, or disposing of in any manner, bottles, caps, stoppers, or crowns, or any bottling supplies, bearing the name "Coca-Cola", or any colorable imitation thereof.

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Further Ordered, Adjudged and Decreed that the defendants Jonas Kowarsky and Michael Bernstein deliver over to The Coca-Cola Company or any duly authorized representative of that Company, upon demand, all caps, crowns and stoppers and all other advertising or matter of any sort whatever which contains the name "Coca-Cola" or any colorable imitation thereof.

That no accounting of profits and damages is ordered from the defendants Jones Kowarsky and Bernstein, this injunction being consented to by the said defendants in lieu of and in satisfaction for such damages and profits; and that no costs shall be entered against these defendants.

LEARNED HAND,
United States District Judge.

We consent to the entry of the foregoing decree:

MICHAEL BERNSTEIN,
JONAS KOWARSKY.

Candler, Thomson & Hirsch, Atlanta, Ga.; Harry D. Nims, New York City, for Complainant.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
EASTERN DIVISION

No. 4419—IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

MORRISON J. MILLER, Defendant.

FINAL DECREE.

Now this day, the parties hereto having consented thereunto as evidenced by their stipulation herein filed, the Court doth

Order, Adjudge and Decree that the plaintiff, The Coca-Cola Company, a Georgia corporation, is the sole and exclusive owner of the trade-mark consisting of the word "Coca-Cola", and is the sole and exclusive owner of the formula whereunder the beverage designated and known to the trade and the public as "Coca-Cola" is made; that the said trade-mark "Coca-Cola" is a lawful, valid and subsisting technical trade-mark and has been lawfully registered as such in pursuance of the several Acts of Congress providing for the registration of trade-marks, and that the certificates of such registration, Certificate numbered 22,406, issued January 31, 1893, and Certificate numbered 47,189 issued October 31st, 1905, are lawful and valid certificates of trade-mark registration and are each the sole and exclusive property of the plaintiff.

That the defendant Morrison J. Miller, his agents, servants and employees and each of them be, and they are hereby, forever and *perpetually enjoined and*

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restrained as follows: from asserting or publishing, verbally or in writing, any claim of title, right or ownership to the trade-mark "Coca-Cola" or the formula whereby the beverage known as "Coca-Cola" is made and produced; from publishing or asserting any statement containing directly or by implication a charge or imputation that the plaintiff is not the sole and exclusive owner of the trade-mark "Coca-Cola" or the formula whereby the syrup or beverage known as "Coca-Cola" is made.

The plaintiff waives an accounting of profits or damages. This decree is entered at the costs of the defendant.

DAVID P. DYER,
Judge.

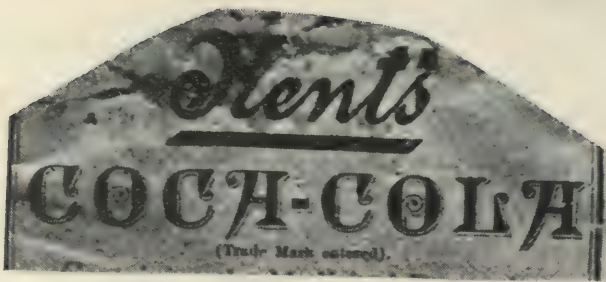
The parties hereto hereby consent to the entry of the above and foregoing final decree, this 27th day of April, 1915.

Candler, Thomson & Hirsch, James L. Hopkins,
Solicitors and of Counsel for Plaintiff.

William Zachritz, Solicitor and of Counsel for Defendant.

(Entered April 27, 1915.)

Coca-Cola
TRADE MARK
REGISTERED



IN THE UNITED STATES PATENT OFFICE

OPPOSITION No. 15,753
KENT'S COCA-COLA

THE COCA-COLA COMPANY
v.
BEERMANN v. KENT.

LEHMANN, PATTISON & NESBIT,
For The Coca-Cola Company.

MESSRS. MUNN & COMPANY,
For Beermann.

Mr. J. F. KERR,
For Kent.

THE COCA-COLA COMPANY

UNITED STATES PATENT OFFICE

THE COCA-COLA CO.

v.

BEERMANN v. KENT.

Trade-Mark for Tonic No. 15,753

Application of Coca-Cola Co. filed May 14, 1892.

Application of Beermann filed Feb. 12, 1892. Reg. 20,818.

Application of Kent filed Nov. 21, 1888. Reg. 16,209.

Messrs. Lehmann, Pattison & Nesbit, Attorneys
for Coca-Cola Company.

Messrs. Munn & Co., Attorneys for Beermann.

Mr. J. F. Kerr, Attorney for Kent.

This is an interference between Kent, the registrant of the trade-mark Coca-Cola; Beermann, the registrant of the trade-mark Co-Co-Colian, and the application of The Coca-Cola Co. for the registration of the trade-mark Coca-Cola.

Beermann filed his application Feb. 12, 1892, and his certificate issued March 8, 1892. In his statement he alleged continuous use since January 1, 1892. He took no testimony, and as this date is long

subsequent to the registration by Kent, he, Beermann, need not be further considered.

Testimony was taken both by Kent and The Coca-Cola Co. On Oct. 11, 1892, a motion was made on behalf of The Coca-Cola Co. among other things, "That all testimony in behalf of Benjamin Kent tending to establish a date prior to the first of June, 1888, be eliminated from the record on the ground that, as the above date is the date set up by him under oath in his letters of registration, as the time at which he began a continuous use of the mark in question, he is held thereto in this interference proceeding." On Nov. 3, 1892, the examiner of interferences passed upon this part of the motion as follows: "It seems very plain to the examiner that the first branch of this motion ought not to be heard upon its merits or determined by him prior to the final hearing of the case, and he does hereby refuse to consider that branch of the motion." Under this order the above motion of The Coca-Cola Co. comes up for determination.

By the Act of March 3, 1881, Sec. 1, relating to the Registration of Trade-Marks, an applicant is required to set forth in his statement "the length of time during which the trade-mark has been used." In compliance with this requirement Kent alleged continuous use in his business since June 1, 1888. In his testimony he attempted to set up the act of adoption and use as far back as 1884 or 1885. He brings one witness who testifies to the store use of the symbol Coca-Cola in 1885 and another who testifies to the same use in January or February, 1886. The Coca-Cola Co. contends that Kent should be restricted to the date alleged in his statement as to the date of adoption and should not be permitted to set up an earlier date. This contention must be supported in view of the present practice, which views a statement, made in connection with an application for the registration of a trade-mark, in the same light as a preliminary

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statement in an interference proceeding between two applications for patents for an invention. *LePage Mfg. Co. v. Russia Cement Co.*, 40 MSC. D. 329. And as parties are strictly held in their proofs to the dates set up in a preliminary statement (Rule 110) the same restriction has been placed upon proofs in a contest as to prior adoption and use of a trade-mark, and the parties held strictly to the dates alleged in their statements filed with the application for registration. Rule 13, Rules Relating to the Registration of Trade-Marks; *Browne on Trade-Marks*, 2 Ed., 1885, p. 625, S. 627. Such being the practice, Kent is not allowed an earlier date than June 1, 1888, the date alleged in his statement, as the date of adoption, and it is not necessary to consider the point raised by attorney for The Coca-Cola Co. that the use by Kent of the said symbol as a "store term" and on written labels, put upon bottles sold over his counter, did not amount to adoption and use. Kent being thus restricted, it becomes necessary for The Coca-Cola Co., upon whom is the burden of proof, to overcome the "*prima facie* evidence of ownership" existing in the registrant Kent by virtue of Sec. 7 of the statute of March 3, 1881. The statement in the application for registration of The Coca-Cola Co. alleges continuous use since June 28, 1887. It appears from the testimony that this date is the date of the registration of a label by one J. S. Pemberton, under the name of "Coca-Cola Syrup and Extract." Asa G. Candler, the president of The Coca-Cola Co., testifies that prior to the formation of said company on Feb. 22, 1892, he had acquired through several intermediate assignments the right to the label and the use of the word Coca-Cola; and that Pemberton, and his other privies in title, had adopted and used the said word to designate a beverage continuously since the spring of 1886. The only other witness, Robinson, testifies to the adoption and use by Pemberton of the word Coca-Cola to designate a beverage in the spring of 1886 and

its continuous use since, and he gives a list of sales in the spring of 1887.

It is to be noted that The Coca-Cola Co. has offended as grievously as Kent in the infringement of Rule 13, by offering testimony to show adoption and use prior to the date alleged in their application statement. But while The Coca-Cola Co. cannot avail themselves of a date earlier than June 28, 1887, the testimony shows beyond any reasonable doubt that on said date the privies in title of the said company had adopted and used the symbol Coca-Cola as a trademark. It follows, therefore, that judgment as to prior adoption and use must be and the same is hereby rendered in favor of The Coca-Cola Co. Limit of Appeal will expire January 4, 1893.

WALTER JOHNSON,
Examiner of Interferences.

December 15, 1892.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1944—SOLA-COLA

THE COCA-COLA COMPANY

v.

SOLA-COLA COMPANY, INC.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For Opposer.

Coca-Cola
TRADE MARK
REGISTERED

Sola Cola
TRADE MARK REGISTERED



IN THE UNITED STATES PATENT OFFICE

OPPOSITION No. 1944

Final Hearing: August 22, 1916

THE COCA-COLA COMPANY
v.
SOLA-COLA COMPANY, INC.

Application No. 89,724, Filed October 7, 1915.
Published November 16, 1915.

*Candler, Thomson & Hirsch, Atlanta, Georgia, and
Messrs. Frank F. Reed and Edward S. Rogers, and
Francis M. Phelps, for The Coca-Cola Company.*

Messrs. H. B. Wilson & Company, for the Sola-Cola Company, Inc.

This is an opposition by The Coca-Cola Company to the registration by the Sola-Cola Company, Inc., of the mark "Sola-Cola", written in script, as a trademark for a beverage and a syrup for making the same.

Without reciting in detail the questions put in issue by the pleadings, it may be stated that the case presents only two questions for consideration, namely, (1) that of the identity of the marks, and (2) whether

THE COCA-COLA COMPANY

the mark of the applicant is substantially the corporate name of the opposer.

The opposer's mark is the expression "Coca-Cola", written in script with certain special flourishes. There is no question but that the opposer used this expression as a trade-mark for beverages, and syrups for making the same, long prior to any date of use claimed by the applicant. It is urged on behalf of the Sola-Cola Company, Inc., that the marks are unlike, and attention is directed to the fact that the first word of its mark "Sola" is totally different from the first word "Coca" of the mark of the opposer. While this is true, taking the expression as a whole, there is not only a close similarity between the appearance of the two expressions, but also a close resemblance in the sound thereof. Applicant writes its mark in script, very closely simulating the well-known chirography of the opposer. The flourishes of the two marks are different, but these alone cannot be regarded as differentiating the marks. While of course the mark of the applicant could be so pronounced as to be differentiated from that of the opposer, the expressions are so clearly alike that when pronounced normally there is serious danger of confusion. In this respect the case is quite similar to that of *Lang v. Green River Distilling Co.*, 148 O. G. 280, 33 App. D. C. 506, where it was held that "Green Ribbon" should not be registered over "Green River" for the same class of goods. The opposer's brief cites a long list of cases in support of its contention that these marks are alike. No attempt will be made to discuss these citations. In my judgment the mark which the applicant seeks to register is not sufficiently different from that of the opposer, either in appearance or sound, as to justify registration over the earlier mark. On the other hand it is believed that confusion would be quite likely to occur, and for this reason the applicant should not be permitted to register.

v. SOLA-COLA COMPANY, INC.

Moreover, since the expression "Sola Cola" is so nearly like "Coca-Cola" as to warrant the conclusion that confusion would arise, "Sola Cola" becomes in effect the essential part of the name of the opposer, and as such cannot be registered for this reason also (Asbestone Co. v. The Philip Carey Manufacturing Co., 200 O. G. 857, 41 App. D. C. 507; The Mansfield Tire & Rubber Company v. Ford Motor Company, 222 O. G. 1056, not yet in App. D. C.; D. H. Burrell & Co. v. Simplex Electric Heating Co., 225 O. G. 737, not yet in App. D. C.). As stated by the court in the first mentioned case, it is the purpose of the statute to take from the realm of registration, names of individuals, firms and corporations, and no one is entitled to register such names for any purpose when objection is raised by the owner of the name.

The *opposition is sustained*, and it is *adjudged* that the Sola Cola Company, Inc., is not entitled to register the mark shown in its application for the goods therein specified.

Limit of appeal: September 30, 1916.

H. E. STAUFFER,
Examiner of Interferences.

August 30, 1916.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 2383—TAKA-KOLA

THE COCA-COLA COMPANY
v.
OLD DOMINION BEVERAGE CORPORATION.

HAROLD HIRSCH, Atlanta, Georgia,
REED & ROGERS, Chicago, Ill.,
FRANCIS M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola
TRADE MARK

Taka-Kola







IN THE UNITED STATES PATENT OFFICE

OPPOSITION No. 2383—July 26, 1921

THE COCA-COLA COMPANY

v.

OLD DOMINION BEVERAGE CORPORATION.

The Coca-Cola Company, c/o Francis M. Phelps,
Washington, D. C.

No response having been received to the office action of June 29, 1921, the *opposition is sustained* and it is hereby adjudged that the Old Dominion Beverage Corporation, the applicant, is not entitled to the registration of the mark for which it has made application.

Limit of appeal: August 15, 1921.

THE COCA-COLA COMPANY

IN THE UNITED STATES PATENT OFFICE

Hearing;
September 19, 1917.

MSP.

THE COCA-COLA COMPANY

v.

OLD DOMINION BEVERAGE CORPORATION.

Opposition No. 2383.

Appeal From Examiner of Interferences.

Trade-Mark for Soft Drinks.

Application of Old Dominion Beverage Corporation
filed January 22, 1917, No. 100,819, published April
10, 1917.

*Mr. Harold Hirsch, Messrs. Frank F. Reed and
Edward S. Rogers and Mr. Francis M. Phelps for
The Coca-Cola Company.*

*Mr. Victor J. Evans for Old Dominion Beverage
Corporation.*

This is an appeal from the decision of the exam-
iner of interferences denying the Old Dominion

V. OLD DOMINION BEVERAGE CORPORATION

Beverage Corporation's motion, (1st) to dismiss, and (2nd) to strike out grounds 1 to 6 of the opposition.

First, as to the dismissal of the opposition. The applicant originally filed for registration the words "Taka-Kola." The examiner of trade-marks refused to register these words on the ground that "The expression 'Taka-Kola' is believed to be the full equivalent of 'Taka-Kola,' which is regarded as descriptive." Thereupon applicant cancelled from the drawing the word Kola and amended its specification to say that "No claim is made to the word Kola."

But applicant's labels as filed still show its mark as actually used to be "Taka-Kola," written in script very much like the script of the registered trade-mark of opposer, "Coca-Cola." Under these circumstances, applicant could use "Taka-Kola" as his mark and state on his labels, etc., "Registered in the U. S. Patent Office," since those words are still on applicant's labels, although Kola is taken off its drawing.

The publication in the Official Gazette of April 10, 1917, Serial No. 100,819, states "no claim being made to the word Kola." Under these circumstances, the interference examiner's decision refusing to dismiss the opposition was right. (See *Quaker City Flour Mills Co. v. Quaker Oats Co.*, 214 O. G. 684, 43 Apps. D. C. 260; *in re Motz Tire & Rubber Co.*, 193 O. G. 513, 40 App. D. C. 487; *Ex Parte Newman*, 159 O. G. 993; *O. & W. Thum Co. v. Dickinson*, 240 O. G. 337, App. D. C.)

Second, in accordance with the decision in *Coca-Cola Company v. Koke Company of America*, 123 Msd. 416, the examiner's refusal to strike out grounds 1 to 6 of the opposition was also right, and his decision refusing to dismiss and strike out is *affirmed*.

J. T. NEWTON,
Commissioner.

September 27, 1917.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1955—KEL-KOLA

THE COCA-COLA COMPANY
v.
KELLY MANUFACTURING COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For the Coca-Cola Company.





IN THE UNITED STATES PATENT OFFICE

LBF

September 19, 1916

OPPOSITION No. 1995
Final Hearing

THE COCA-COLA COMPANY.
v.
KELLY MANUFACTURING COMPANY.

Application No. 91,224, Filed December 6, 1915,
Published January 18, 1916.

A Non-alcoholic Beverage Sold as a Soft Drink and
Syrup for Making the Same.

*Mr. Harold Hirsch, Messrs. Frank F. Reed and
Edward S. Rogers and Mr. Francis M. Phelps for
The Coca-Cola Company.*

*Messrs. H. B. Wilson & Co. for Kelly Manufac-
turing Company.*

This is an opposition by the Coca-Cola Company
against registration of the mark for which applica-
tion has been filed by the Kelly Manufacturing Com-
pany.

THE COCA-COLA COMPANY

The only question to be considered in this case is the similarity of the marks, for the goods are the same and the opposer has prior use of its mark.

The prominent and important feature of the applicant's mark is the word "Kel-Kola," written in script with a paraph underneath the word. There are other minor features, but these are not of any particular importance.

The mark of the opposer is well known and consists of the words "Coca-Cola" in script type. The last two syllables of both marks are identical, and the style of type is so nearly similar that the difference between the manner in which the syllable "ola" is written in the two words can hardly be distinguished. The marks as a whole are regarded as similar.

The opposition is sustained, and it is adjudged that the Kelly Manufacturing Company, the applicant, is not entitled to register the mark shown in its application.

Limit of Appeal: November 18, 1916.

H. E. STAUFFER,
Examiner of Interferences.

October 18, 1916.

Coca-Cola
TRADE MARK
REGISTERED

Ko-Lo-Lem-A

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 2286—KO-CO-LEM-A

THE COCA-COLA COMPANY

v.

RAY CAVE.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For Opposer.

THE COCA-COLA COMPANY

UNITED STATES PATENT OFFICE

Hearing:
June 8, 1917

JRS

THE COCA-COLA COMPANY

v.

RAY CAVE.

In Re: Opposition No. 2286.

Appeal from Examiner of Interferences.

Trade-Mark for Soda-Fountain Syrup.

Application of Ray Cave filed October 9, 1916, No. 98,513, published December 12, 1916.

Mr. Harold Hirsch, Messrs. Reed and Rogers, and Mr. Francis M. Phelps, for The Coca-Cola Company.

Mr. B. F. Hartz for Ray Cave.

Appeal from dismissal of an opposition to registration of a trade-mark.

Ray Cave appears to have lately adopted and applied for registration of the term "Ko-Co-Lem-A" as a mark for soda fountain syrup; the labels filed with his application showing also that he does business as the "Ko-Co-Lem-A Co." Registration was

opposed by The Coca-Cola Co. on the ground that it has for many years used the similar trade-mark "Coca-Cola" for the same goods, having registered its mark in 1893 (No. 22,406). The opposer also pointed out that its name Coca-Cola has always been written in a peculiar style of lettering which the applicant has imitated. On a demurrer resting substantially on the contention of no confusing resemblance of the marks of the parties, the examiner of interferences held that the common part of the marks, i. e., the terms "Coca" or "Coke," "is a common term descriptive of the cocoa bean and therefore not to be regarded as the essential part of the mark of either party"; wherefore he found the marks unlike and the case not open to question enough to go to proofs.

I think there has been too strict an analysis of the marks and too little weight given their whole significances. I can think of no proper reason why the applicant chose a term which uses the same number of syllables, begins and ends with the same syllables, and employs the same lettering including the same initial and final flourishes in the lettering. He is under suspicion because he did not take care to adopt a "mark by which the goods of the owner * * * *may be distinguished* from other goods of the same class," as contemplated by the statute (Sec. 5). If he was really using "Coco" as a descriptive term he might be naturally expected to call his goods "Lemakoco" rather than "Ko-Co-Lem-A."

The Examiner's ruling is reversed.

T. W. H. CLAY,
Assistant Commissioner.

June 15, 1917.

THE COCA-COLA COMPANY

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

JHD

August 3, 1917.

In Re: Opposition No. 2286.

THE COCA-COLA COMPANY

v.

CAVE.

Before the Examiner of Interferences.

The Coca-Cola Company, c/o Francis M. Phelps, City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,

Commissioner of Patents.

Whereas, the applicant, Cave, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of his failure to file an answer, and whereas the time allowed for such action has expired, pursuant to the notice given July 16, 1917, the *opposition is sustained*, and judgment is hereby rendered to the effect that Ray Cave is not entitled to the registration of the trade-mark for which he has made application.

Limit of appeal: August 23, 1917.

Coca-Cola
TRADE MARK
REGISTERED

Carbo
TRADE MARK REGISTERED
Gola

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1759—CARBO-COLA

THE COCA-COLA COMPANY
v.
THE CARBO-COLA COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

THE COCA-COLA COMPANY

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

IAW

August 19, 1915.

In Re: Opposition No. 1759

THE COCA-COLA COMPANY

v.

THE CARBO-COLA COMPANY.

Before the Examiner of Interferences.

The Coca-Cola Co., c/o F. M. Phelps, City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,

Commissioner of Patents.

This case is before me for the consideration of two motions as follows:

1. A motion by The Carbo-Cola Company filed August 14, 1915, to quash or otherwise terminate the proceeding without a determination of the question of injury to the opposer.

2. A motion by The Coca-Cola Company filed August 16, 1915, for judgment upon the record.

According to the record as it now stands, the applicant, The Carbo-Cola Company, is given until August 18, 1915, within which to answer. It is freely admitted, however, on behalf of the applicant that it cannot register, and reference is made to

V. THE CARBO-COLA COMPANY

interference No. 38672 between John C. O'Dell and The Carbo-Cola Company in which a judgment was entered August 9, 1915, based upon a concession of the Carbo-Cola Company in favor of O'Dell. The right of appeal from that decision was waived and such decision is therefore final. It is contended that in view of that judgment the question of the right of The Carbo-Cola Company to register herein is a moot question and the opposition should therefore be dismissed. On behalf of The Coca-Cola Company it is urged that the examiner of interferences is without authority to dispose of this proceeding except by a judgment, and reference is made to the case of William A. Coombs Milling Co. v. Dewey Bros. Milling Co., 171 O. G. 743; 1911 C. D. 129, wherein it was held that after an opposition had been filed the same would not be terminated except by a judgment either sustaining or dismissing the opposition. It is argued on behalf of the opposer that it was not a party to the interferences referred to and therefore is not in any way bound by any judgment made therein. This contention is believed to be well founded. At the time the opposition was filed The Carbo-Cola Company was seeking registration. It cannot now avoid the effects of a judgment sustaining the opposition on the ground that its right to register has already been determined in another case to which the opposer is not a party. On the other hand, in view of the admission that it cannot register, there seems to be no reason why the case may not be at once disposed of by a judgment in favor of the opposer.

The motion of The Carbo-Cola Company to dismiss is denied.

The motion of The Coca-Cola Company for judgment is granted, the *opposition is sustained*, and it is *adjudged* that The Carbo-Cola Company is not entitled to register the mark in its application for the goods therein specified.

Limit of Appeal: September 20, 1915.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1894—TENN-COLA

THE COCA-COLA COMPANY
v.
THE TENNESSEE COLA COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola
TRADE MARK
REGISTERED

Jenn-Cola



IN THE PATENT OFFICE OF THE UNITED STATES

Final Hearing: August 22, 1917

OPPOSITION No. 1894

THE COCA-COLA COMPANY

v.

THE TENNESSEE COLA COMPANY.

This is an opposition by The Coca-Cola Company to registration by the Tennessee Cola Company of a trade-mark for syrup for making soft drinks.

The mark sought to be registered is "Tenn-Cola," while the mark of the opposer is "Coca-Cola." The two marks are applied to the same class of goods.

The applicant has taken no testimony and accordingly has no established date of use of the mark shown in its application (Greene, Tweed & Co. v. Manufacturers' Belt Hook Company, 137 O. G. 2221). The opposer is the owner of two certificates of registration (Nos. 22,406 and 47,189), issued on January 31, 1893, and October 31, 1905, respectively. Moreover, the testimony introduced on behalf of opposer shows that party's long-continued use of the mark on its goods and extensive advertising of said mark. Opposer's ownership and use of the registered mark "Coca-Cola" for many years past is well established.

The mark shown in the application for registration consists of the hyphenated words "Tenn-Cola,"

THE COCA-COLA COMPANY

written in script of the same style as that employed in opposer's mark and with paragraphs under the separate syllables of the word. Both marks are hyphenated words with the same number of letters in each half. Both end with "Cola." The word "Tenn-Cola" bears considerable resemblance to "Coca-Cola," and this natural resemblance is emphasized and increased by the manner in which the former is displayed. No doubt as to its similarity to the registered mark "Coca-Cola" can be entertained. While it is unnecessary here to consider the question of unfair competition the applicant's imitation of the advertising methods of The Coca-Cola Company, as shown by the evidence produced, strengthens the conclusion that its mark is an intentional simulation of the well-known mark owned and used by opposer. The mark sought to be registered is so similar to opposer's mark as to be apt to cause confusion therewith and its registration must, therefore, be refused.

The opposition is sustained, and it is adjudged that the Tennessee Cola Company, the applicant, is not entitled to register the mark for which it has made application.

Limit of Appeal: September 14, 1917.

J. W. MILBURN,

Acting Examiner of Interferences.

August 25, 1917.



IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1971—PENN-COLA

THE COCA-COLA COMPANY
v.
THE PENN-COLA COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

THE COCA-COLA COMPANY

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

LAW

November 9, 1916

In Re: Opposition No. 1971

THE COCA-COLA COMPANY,
v.
THE PENN-COLA COMPANY.

Before the Examiner of Interferences.

Coca-Cola Co., c/o F. M. Phelps, City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

This case is before me on motion for judgment by The Coca-Cola Company upon the record as it now stands.

The motion is based upon the admission in the answer that there would be confusion between the mark which the applicant seeks to register and the mark of the opposer. The opposition alleges fraud on behalf of the applicant. This is not admitted, but, on the other hand, is expressly denied. Intentional deceptive imitation is likewise denied.

v. THE PENN-COLA COMPANY

Inasmuch as the motion is based upon the admission of confusion, the judgment to be entered will be based upon this question. It being admitted that the mark "Penn-Cola" which the applicant seeks to register is so near like the mark "Coca-Cola" of the opposer as to cause confusion, the applicant cannot be permitted to register.

The opposition is sustained, and it is adjudged that The Penn-Cola Company is not entitled to register the mark shown in its application for the goods therein specified.

Limit of appeal: November 29, 1916.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1900—CITRA-COLA

THE COCA-COLA COMPANY
v.
CITRA-COLA MANUFACTURING COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola
TRADE MARK

Citra-Cola



DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE

IAW

April 24, 1916

In Re: Opposition No. 1900

THE COCA-COLA COMPANY

v.

CITRA-COLA MANUFACTURING and BOTTLING
COMPANY 77.

Before the Examiner of Interferences.

The Coca-Cola Co., c/o F. M. Phelps, Washington,
D. C.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,

Commissioner of Patents.

Whereas, The Citra-Cola Manufacturing and Bottling Company, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of March 30, 1916, the *opposition is sustained* and a *judgment is hereby rendered* to the effect that the Citra-Cola Manufacturing and Bottling Company is not entitled to the registration of the trade-mark for which it has made application.

Limit of appeal: May 15, 1916.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1899—COCA-COLA GUM

THE COCA-COLA COMPANY
v.
FRANKLIN CARO COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
FRANCIS M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola

TRADE MARK
REGISTERED



GUARANTEED BY THE FRANKLIN CARO CO. UNDER PURE
NICHOLAND DRUGS A.L.T. JUNE 10TH 1905 SERIAL NO. 2242





IN THE UNITED STATES PATENT OFFICE

OPPOSITION No. 1899

THE COCA-COLA COMPANY

v.

FRANKLIN CARO COMPANY.

Whereas, the applicant, the Franklin Caro Co. has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer; and whereas the time allowed for such action has expired, pursuant to the notice given August 24, 1916, *the opposition is sustained, and judgment is hereby rendered* to the effect that the Franklin Caro Co. is not entitled to the registration of the trade-mark for which it has made application.

Limit of Appeal: October 19, 1916.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 3713—"KAW-KOLA"

THE COCA-COLA COMPANY
v.
KANSAS CITY KOLA COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Ill.,
BROWNE & PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola
TRADE MARK
REGISTERED

Kaw-Kola
HAS THE KICK



IN THE PATENT OFFICE OF THE UNITED
STATES

February 20, 1922

In Re: Opposition No. 3713

COCA-COLA COMPANY
v.
KANSAS CITY KOLA COMPANY.

Whereas Kansas City Kola Company, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of their failure to file an answer, and whereas the time for such showing has expired, pursuant to the notice of January 14, 1922, the *opposition is sustained* and it is hereby *adjudged* that Kansas City Kola Company is not entitled to the registration of the trade-mark for which they have made application.

Limit of appeal: March 22, 1922.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1879—CELRO-KOLA

THE COCA-COLA COMPANY
v.
THE CELRO-KOLA COMPANY

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D C.,
For The Coca-Cola Company.

Coca-Cola

*Celro-
Cola*



DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

January 25, 1916

In Re: Opposition No. 1879

THE COCA-COLA COMPANY
v.
CELRO-KOLA COMPANY.

The Coca-Cola Company, c/o F. M. Phelps, City.

Please find below a communication from the Examiner in Charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

In accordance with the stipulation of the parties, the *opposition is sustained* in the terms of the same, as follows:

Without passing upon the other issues involved in this opposition, the opposition of The Coca-Cola Company is sustained on the ground that the script lettering in which the trade-mark "Celro-Kola" is shown in the application of the Celro-Kola Company, filed June 25, 1915, Serial No. 87,588, is an apparent simulation of the style of lettering used for the trade-mark Coca-Cola of The Coca-Cola Company.

No other issues are passed on by this order, and it is further without prejudice to the rights of the

THE COCA-COLA COMPANY

Celro-Kola Company to make application to register its said trade-mark in any way not a simulation of the style of lettering of said trade-mark Coca-Cola, and is further, without prejudice to the pending application of said Celro-Kola Company, No. 91,096, filed December 2, 1915.

The action of the parties is regarded as a waiver of the right of appeal, and no time for appeal is theretofore allowed.

Coca-Cola

TRADE MARK
REGISTERED

DRINK

Sherry-Coke



THE ORIGINAL
CHERRY AND COLA DRINK

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 3343—SHERRY-COKE

THE COCA-COLA COMPANY

v.

FARRAR J. SULLIVAN.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
BROWNE & PHELPS, Washington, D. C.,
For The Coca-Cola Company.

THE COCA-COLA COMPANY

IN THE PATENT OFFICE OF THE UNITED
STATES

OPPOSITION No. 3343—May 3, 1921

THE COCA-COLA COMPANY

v.

FARRAR J. SULLIVAN.

Whereas Sullivan, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of his failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of March 26, 1921, the *opposition is sustained*, and it is hereby *adjudged* that Farrar J. Sullivan, the applicant, is not entitled to the registration of the trade-mark for which he had made application.

Limit of appeal: June 3, 1921.

v. FARRAR J. SULLIVAN

IN THE PATENT OFFICE OF THE UNITED
STATES

OPPOSITION No. 3343—March 28, 1921

THE COCA-COLA COMPANY

v.

FARRAR J. SULLIVAN.

The time set for filing an answer to the notice of opposition having passed and Sullivan, the applicant, having failed to take any action, notice is hereby given that judgment will be rendered sustaining the notice of opposition of The Coca-Cola Company, unless good and sufficient cause is shown on or before April 26, 1921, why such action should not be taken.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1881—MITCH-O-COLA

THE COCA-COLA COMPANY
v.
WARRIOR BOTTLING COMPANY.

HAROLD HIRSCH, Atlanta, Georgia,
FRANK F. REED and EDWARD S. ROGERS, Chicago, Ill.,
FRANCIS M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola

Match-O-Cola



DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

JHD

December 14, 1915

In Re: Opposition No. 1881

THE COCA-COLA COMPANY
v.
WARRIOR BOTTLING COMPANY.

Before the Examiner of Interferences.

The Coca-Cola Company, c/o Francis M. Phelps, Barrister Bldg., City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the applicant, The Warrior Bottling Co., has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such action has expired, pursuant to the notice given November 10, 1915, the *opposition is sustained*, and judgment is hereby rendered to the effect that The Warrior Bottling Co. is not entitled to the registration of the trade-mark for which it has made application.

Limit of appeal: January 14, 1916.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 1972—KING-COLA

THE COCA-COLA COMPANY
v.
VIRGINIA BEVERAGE CORPORATION.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.





DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

LBF

January 13, 1917

In Re: Opposition No. 1972

THE COCA-COLA COMPANY
v.
VIRGINIA BEVERAGE CORPORATION.

Before the Examiner of Interferences.

The Coca-Cola Company, c/o F. M. Phelps, City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, the Virginia Beverage Corporation, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of December 9, 1916, the *opposition is sustained*, and judgment is hereby rendered to the effect that the Virginia Beverage Corporation is not entitled to register the mark for which it has made application.

Limit of appeal: February 2, 1917.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 2154—TRICO—GENUINE
COCA AND COLA FLAVOR

THE COCA-COLA COMPANY
v.
NATIONAL CARBONATING SYRUP CO.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
FRANCIS M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola

TRADE MARK
REGISTERED





IN THE PATENT OFFICE OF THE UNITED
STATES

Opposition No. 2154—December 1, 1916

THE COCA-COLA COMPANY
v.
NATIONAL CARBONATING SYRUP COMPANY.

The Coca-Cola Company, c/o F. M. Phelps:

Whereas, the National Carbonating Syrup Company, the applicant, has failed to make any showing why judgment of the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and

Whereas, the time allowed for such showing has expired, pursuant to the notice of October 25, 1916, the *opposition is sustained* and judgment is hereby rendered to the effect that the National Carbonating Syrup Company is not entitled to register the trademark for which it has made application.

Limit of appeal: December 21, 1916.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 2017—SILVER COLA

THE COCA-COLA COMPANY

v.

WM. POWER.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
FRANK F. REED and EDWARD S. ROGERS, Chicago, Ill.,
FRANCIS M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola
TRADE MARK
REGISTERED

Silver Cola



DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

IAW

June 9, 1916

In Re: Opposition No. 2017

THE COCA-COLA COMPANY

v.

POWER.

Before the Examiner of Interferences.

The Coca-Cola Co., c/o Francis M. Phelps, City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,

Commissioner of Patents.

Whereas, William W. Power, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of his failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of May 5, 1916, the *opposition is sustained*, and a judgment is rendered to the effect that William W. Power is not entitled to the registration of the trade-mark for which he has made application.

Limit of appeal: June 29, 1916.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 2253—QUA KOLA

THE COCA-COLA COMPANY
v.
THE QUAKER-KOLA COMPANY.

CANDLER, THOMSON & HIRSCH, Atlanta, Ga.,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.

Coca-Cola

QUAKOLA



DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

IAW

June 26, 1917

In Re: Opposition No. 2253

THE COCA-COLA COMPANY
v.
THE QUAKER-KOLA COMPANY.

Before the Examiner of Interferences.

Coca-Cola Co., c/o F. M. Phelps, City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,
Commissioner of Patents.

Whereas, The Quaker-Kola Company, the applicant, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of its failure to file an answer, and whereas the time allowed for such showing has expired, pursuant to the notice of May 31, 1917, the *opposition is sustained*, and a judgment is hereby rendered to the effect that The Quaker-Kola Company is not entitled to the registration of the trade-mark for which it has made application.

Limit of appeal: July 16, 1917.

IN THE PATENT OFFICE OF THE UNITED STATES

OPPOSITION No. 2241—PRINCE-COLA

THE COCA-COLA COMPANY

v.

G. A. MILLER.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
REED & ROGERS, Chicago, Illinois,
F. M. PHELPS, Washington, D. C.,
For The Coca-Cola Company.





DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE
WASHINGTON, D. C.

In Re: Opposition No. 2241—March 24, 1917

THE COCA-COLA COMPANY

v.

MILLER.

The Coca-Cola Company, c/o Francis M. Phelps, Barrister Bldg., City.

Please find below a communication from the Examiner in charge of Interferences in regard to the above-cited case.

Very respectfully,

THOMAS EWING,

Commissioner of Patents.

Whereas, the applicant, Miller, has failed to make any showing why judgment on the record should not be entered sustaining the notice of opposition, in view of his failure to file an answer, and whereas the time allowed for such action has expired, pursuant to the notice given February 19, 1917, the *opposition is sustained*, and judgment is hereby rendered to the effect that G. A. Miller is not entitled to the registration of the trade-mark for which he has made application.

Limit of appeal: April 13, 1917.

IN THE COURT OF CIVIL APPEAL OF TEXAS

225 S. W. 791

No. 6240—NOVEMBER 10, 1920

THE COCA-COLA COMPANY, *et al.*

v.

STATE OF TEXAS.

1. **MONOPOLIES KN. 8—NOT FAVORED EXCEPT AS TO THE MATTER OF PATENTS, ETC.**

Private monopolies are contrary to the genius of a commercial people, and contracts in restraint of trade are not looked upon with favor, but the federal Constitution, however, provides for the creation of monopolies in the matter of patent rights, trade-marks, and copyrights (Article 1, Sec. 8).

2. **COPYRIGHTS KN. 2—PATENTS KN. 2—TRADE-MARKS AND TRADE-NAMES KN. 42—STATES CANNOT NULLIFY CONGRESSIONAL ACTS.**

Where Congress has legislated under Const. U. S. Art. 1, Sec. 8, providing for monopolies in the matter of patent rights, trade-marks, and copyrights, no state can nullify its acts.

3. **COPYRIGHTS KN. 50—PATENTS KN. 216—TRADE-MARKS AND TRADE-NAMES KN. 35—ASSIGNEE MAY BE RESTRICTED AS TO USE.**

The owner of a patent right, copyright, or trade-mark, having the exclusive right to manufacture and sell the article protected thereby, and being under no legal obligation to grant such right to another, may impose upon his assignee such restrictions as he may see proper, and to which his assignee will agree, including the price at which the article may be sold, the territory in which it may be manufactured and sold, the material that may be used in its manufacture or in connection therewith.

4. **COPYRIGHTS KN. 50—PATENTS KN. 191—TRADE-MARKS AND TRADE-NAMES KN. 31—ARTICLE HAVING BEEN SOLD, NO RESTRICTIONS CAN BE IMPOSED UPON VENDEE AS TO FUTURE SALE.**

The owner of an article protected by patent, copyright, or trade-mark, when he has manufactured and sold the same, cannot

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impose restrictions upon his vendee as to the future sale of the same, since having parted with his ownership therein it enters the channels of trade as an article of commerce and is thereafter beyond his control.

5. **COPYRIGHTS KN. 41, 42—PATENTS KN. 191—TRADE-MARKS AND TRADE NAMES KN. 23—NOT ARTICLES OF COMMERCE IN THE SENSE THAT THEY MAY BE CONSUMED BY PURCHASING PUBLIC.**

A trade-mark, patent, or copyright is property in the sense that it has a commercial value and may be sold as other property, but it is not an article of commerce in the sense that it may be consumed by the purchasing public.

6. **TRADE-MARKS AND TRADE-NAMES KN. 32—ARTICLE NEED NOT BE ACTUALLY MANUFACTURED BY OWNER OF TRADE-MARK.**

An article need not be actually manufactured by the owner of the trade-mark, it being enough that it is manufactured under his supervision and according to his directions, thus securing both the right of the owner and the right of the public.

7. **MONOPOLIES KN. 17 (1)—COCA-COLA SYRUP HELD NOT ARTICLE USED BY PUBLIC, AND RE-SALE MAY BE RESTRICTED.**

Coca-Cola syrup, used in the manufacture of Coca-Cola, is not an article to be used by the public, but is useful only as an ingredient in the manufacture of bottled Coca-Cola, and as no one but the licensee of The Coca-Cola Company has the right to manufacture bottled Coca-Cola, it was no restriction on trade to provide in a contract of assignment of rights that bottlers should not sell the syrup, which was sold to them by the company.

8. **COPYRIGHTS KN. 1—APPLIES EXCLUSIVELY TO WORK OF ART OR LITERATURE.**

A copyright, while possessing the same attributes of monopoly as a patent or trade-mark, differs from both of them in that it applies exclusively to works of art or literature.

Appeal from District Court, Travis County; GEO. CALHOUN, Judge.

Suit by the State against The Coca-Cola Company and others. *Judgment for plaintiff, and defendants appeal. Reversed and rendered.*

THE COCA-COLA COMPANY, *et al.*,

Candler, Thomson & Hirsch, of Atlanta, Ga.; *H. O. Head*, of Sherman, and *Crane & Crane*, of Dallas, for appellants.

C. M. Cureton, Atty. Gen., and *W. A. Keeling*, Asst. Atty. Gen., for appellee.

FINDINGS OF FACT:

JENKINS, J.:

This suit was brought by appellee to restrain The Coca-Cola Company, the Coca-Cola Bottling Company, and certain local bottling companies from executing certain contracts, hereinafter stated, as being in violation of the anti-trust laws of this state. It was tried before the court practically upon an agreed statement of facts, and judgment was rendered as prayed for.

We copy from the agreed statement of facts, and adopt as our findings of fact the following:

“It is agreed that since the 22d of February, 1892, the defendant, The Coca-Cola Company, has been the owner and entitled to the exclusive use of a formula for the making and manufacture of a beverage known as Coca-Cola, and the basic syrup from which said beverage is made; and likewise the owner and entitled to the exclusive use of the trade-name ‘Coca-Cola,’ which trade-name was exclusively applied to the said beverage, Coca-Cola, and the basic syrups from which said beverage was made; that it has at all times since said date been the exclusive owner of said trade-name and said formula, and entitled to their exclusive use, unless the sale of either basic syrup, as a matter of law, carries with it the right to dilute and bottle same, and then sell same under the trade-mark of defendant, Coca-Cola Company, as bottled Coca-Cola, and without the consent of said defendant.

“That being the exclusive owner of the said trade-name Coca-Cola and said formula, the defendant, The Coca-Cola Company, did on the 14th day of May, 1892, apply to the United States Patent Office to have its trade-name Coca-Cola registered as a trade-mark for its beverage and basic syrups out of which same was made; that its application was granted, and on the 31st of January, 1893, the said trade-name Coca-Cola was registered as its trade-mark for its said beverage and its said basic syrups, as will more fully appear by reference to the certificate of registration issued by the said Patent Office of the United States, attached to defendant’s answer as Exhibit A.

“That thereafter, to wit, on or about the 22d day of April, 1905, it being still the exclusive owner of the said formula under which Coca-Cola was manufactured, the trade-name Coca-Cola and the trade-mark registered as aforesaid, and entitled to the exclusive use thereof, as above explained, applied to the said Patent Office of the United States to have its trade-mark Coca-Cola again registered therein, in compliance with the act of Congress approved February 20, 1905, which said Patent Office granted its application on the 31st of October, 1905, and registered the same as a trade-mark for the tonic beverages of the said defendant, the Coca-Cola Company, and the basic syrups for the manufacture of said beverages, all of which will more fully appear by reference to certificate of registration issued by said Patent Office of the United States, and attached to defendant’s answer, marked ‘Exhibit B’; that said certificate of registration is still in full force and effect, and wholly unrevoked or canceled.

“That the Coca-Cola Company is entitled to

the sole and exclusive right, both general and special, as above explained, to use and employ the trade-mark Coca-Cola or trade-name Coca-Cola; that this right of the Coca-Cola Company has been generally recognized by the public; that this right to sell this beverage, thus bottled and sold under its trade-mark, is exceedingly

“That the said defendant, the Coca-Cola Company, has continuously since February 22, 1892, used the said trade-mark Coca-Cola to designate its beverages and syrups from which they are made, and particularly to designate its beverage sold in bottles; that because of its exclusive ownership and exclusive use the defendant, Coca-Cola Company, from said date last named, has spent the sum of not less than \$10,000,000 in advertising its said beverages and popularizing same throughout the United States and foreign countries as well.

“The Coca-Cola Company, it is admitted, contends that these contracts are necessary in order to protect the integrity of its product, and therefore the value of its trade-mark. It contends that unless it can make contracts for the exclusive use of its trade-mark, such trade-mark will be of little value to it. The plaintiff contends that these contracts hereto attached are in restraint of trade and violative of the anti-trust laws of Texas, and that the defendant should therefore be enjoined from further operation under them.”

In addition to the above, we find the following facts:

The Coca-Cola Company is a corporation, as is also The Coca-Cola Bottling Company, each having a permit to do business in Texas.

The Coca-Cola Company is the owner of a secret process, by which it manufactures two kinds of

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syrups, each of which is known as Coca-Cola syrup. One is sold to the proprietors of soda fountains, to be mixed with carbonated water and sold to be drunk at the counter. This syrup is not involved in this suit. The other is manufactured to be used solely in the manufacture of a bottled drink, known as Coca-Cola.

The Coca-Cola Company is the owner of the trade-mark, Coca-Cola, and the same is used by it and its assignees to designate a bottled drink sold under the name Coca-Cola. Prior to the institution of this suit, The Coca-Cola Company entered into a contract with The Coca-Cola Bottling Company in which the latter company was granted the exclusive right to manufacture Coca-Cola in the State of Texas, and sell the same in bottles under the trade-mark Coca-Cola. It was provided in said contract that Coca-Cola should be composed of certain ingredients in certain proportions, including Coca-Cola syrup, and bottled in a specified manner; also that the bottling company would buy Coca-Cola syrup exclusively from The Coca-Cola Company at an agreed price, and that it would not use any substitute therefor in bottling Coca-Cola, and that it would not sell such syrup; also that The Coca-Cola Company would not sell its bottling syrup to anyone else in Texas. The Coca-Cola Bottling Company was permitted to make similar contracts with local bottling companies as to definite limited territory in Texas, subject to the approval of The Coca-Cola Company. The bottling company has made such contracts with numerous local bottling companies in this state, and all such contracts are being carried out by the respective parties thereto, and will continue so to be unless restrained by an order of court. There are no restrictions in these contracts as to sale of bottled Coca-Cola, either as to price or territory.

OPINION.

Contracts creating monopolies and in restraint of trade, or alleged so to be, have been a fruitful source of litigation. The decisions in reference thereto have not been altogether harmonious. It would serve no useful purpose to cite and discuss these numerous decisions. We will content ourselves with stating some general principles and applying them to the facts of the instant case, citing a few cases which we deem in point in support of our views of the law as herein expressed.

(1, 2) Private monopolies are contrary to the genius of a commercial people, and contracts in restraint of trade are not looked upon with favor. The Constitution of the United States, however, expressly provides for the creation of monopolies in the matter of patent rights, trade-marks and copyrights. Article 1, Sec. 8. Congress has legislated under this provision, and no state can nullify its acts. "The very object of these laws is monopoly." *Bement v. Harrow Co.*, 186 U. S. 91, 22 Sup. Ct. 474, 46 L. Ed. 1069; *Tea Co. v. Cream of Wheat Co.* (D. C.), 224 Fed. 572. The value of a trade-mark to its owner consists in the monopoly which it gives him by reason of his exclusive right to use the same. *Kidd v. Johnson* (D. C.), 100 U. S. 617, 620, 25 L. Ed. 770; *Coca-Cola Co. v. Butler* (D. C.), 229 Fed. 224; *Bennett v. Coca-Cola Co.*, 238 Fed. 513, 151 C. C. A. 449; *Baglin v. Cusenier*, 221 U. S. 580, 31 Sup. Ct. 669, 55 L. Ed. 869.

(3) The owner of a patent right, copyright, or trade-mark having the exclusive right to manufacture and sell the article protected thereby, and being under no legal obligation to grant such right to another, may impose upon his assignee such restrictions as he may see proper, and to which his assignee will agree, including the price at which the article may be sold, the territory in which it may be manufactured

and sold, the material that may be used in its manufacture, or in connection therewith. *Bement v. Harrow Co.*, *supra*; *Bennett v. Coca-Cola Co.*, *supra*; *Clark v. Wire Fence Co.*, 22 Tex. Civ. App. 41, 54 S. W. 392; *Bauer v. O'Donnell*, 229 U. S. 1, 33 Sup. Ct. 616, 57 L. Ed. 1046, 50 L. R. A. (N. S.) 1185, Ann. Cas. 1915 A, 150; *Vietrola Talking Machine v. Straus* (D. C.), 222 Fed. 524.

(4) The owner of an article protected by a patent, copyright, or trade-mark, when he has manufactured and sold the same, cannot impose restrictions upon his vendee as to the future sale of the same. Having parted with his ownership therein, it enters the channels of trade as an article of commerce, and is thereafter beyond his control. *Henry v. Dick*, 224 U. S. 1, 32 Sup. Ct. 364, 56 L. Ed. 653; *Victor Talking Machine v. Straus*, *supra*; *Bobbs-Merrill v. Straus*, 210 U. S. 339, 28 Sup. Ct. 722, 52 L. Ed. 1086; *Miles Med. Co. v. Parks*, 220 U. S. 373, 31 Sup. Ct. 376, 55 L. Ed. 502; *Bauer v. O'Donnell*, *supra*; *Hill v. Gray*, 163 Mich. 12, 127 N. W. 803, 30 L. R. A. (N. S.) 327.

There is, however, a marked distinction between the sale of an article, the manufacture of which is protected by a patent or copyright, or the right to use a trade-mark in connection with the sale thereof, and the sale of the right so secured. In the one case, the finished article ready for commerce is sold. In the other case, nothing tangible is sold, but only the right to produce and sell such tangible article; in other words, the right to use the exclusive privilege which has been granted to the owner of the patent, copyright, or trade-mark, which, as we have said, may be granted upon such terms as the parties may agree upon, or failing such agreement, may be withheld altogether. The right of the owner of property to dispose of same upon such terms as he may see proper is universal. The right to fix the terms upon which another (his vendee) may dispose of his

property is deemed as being a restraint upon the freedom of trade.

(5) A trade-mark, patent, or copyright is property in the sense, that it has a commercial value, and may be sold as other property, but it is not an article of commerce in the sense that it may be consumed by the purchasing public. However valuable it may be to its owner, it is nothing more than a privilege, valuable because of its exclusiveness. "The property (in a trade-mark) is the use." *Canal Co. v. Clark*, 13 Wall. 311, 20 L. Ed. 583. The sale of a trade-mark is nothing more than a license from the owner to use the name; hence his right to impose restrictions upon such license.

(6) The protection given by law has a twofold object; to protect the owner in his property, and to protect the public from being deceived by reason of a misleading claim that the article bearing the trade-mark is the article manufactured by the owner of the trade-mark when in fact it is not. *Bennett v. Coca-Cola*, *supra*. The article need not be actually manufactured by the owner of the trade-mark; it is enough that it is manufactured under his supervision and according to his direction. This secures both the right of the owner and the right of the public. *Nelson v. Winchell*, 203 Mass. 75, 89 N. E. 180, 23 L. R. A. (N. S.) 1150-1160.

The office of a trade-mark is to guarantee the purity of the article, it being presumed that as the owner has the exclusive right to use the same, he will see that the goods sold under it are of such a character as will win and retain the confidence and patronage of the purchasing public. A trade-mark thus becomes "a visible sign of an upward grace."

(7) Applying these legal principles to facts of the instant case, we have an apt illustration of the necessity of the owner of a trade-mark being able to control its manufacture as security both to his rights and

the rights of the public. The trade-mark Coca-Cola has become of great value by reason of the reputation it has acquired. Bottled Coca-Cola is a drink extensively consumed by the public, who are interested in maintaining its purity, and who accept it by reason of the trade-mark which it bears. To maintain this standard, The Coca-Cola Company stipulated that no syrup other than Coca-Cola syrup should be used in the manufacture of bottled Coca-Cola. Compliance with this stipulation could be secured in no other way than by the bottlers purchasing Coca-Cola syrup from The Coca-Cola Company, for the reason that no one else knows the secret of its manufacture. As Coca-Cola syrup is not an article to be used by the public, but is useful only as an ingredient in the manufacture of bottled Coca-Cola, and as no one except the licensee of The Coca-Cola Company has the right to manufacture bottled Coca-Cola, it was no restriction on trade to provide in the contract that the bottlers should not sell the same. There was no such trade. The licensed bottlers used it for the sole purpose for which it was manufactured. No one else has the right to use it for such purpose. "As the syrup manufactured by the appellant is not itself consumed by the public, * * * there could be no sale of the syrup unless there was a sale of the beverage made therefrom." *Bennett v. Coca-Cola Co., supra.*

It is the contention of appellee that, inasmuch as The Texas Bottling Company, with the approval of The Coca-Cola Company, has granted to different bottling companies the exclusive right to manufacture and sell bottled Coca-Cola in certain defined territories, and as these contracts virtually cover the entire state, a monopoly has thereby been created. Not so; it only continues the legal monopoly already existing. The Coca-Cola Company, having the exclusive right to sell bottled Coca-Cola in the United States, might itself have operated as many bottling plants as it saw fit in this state, and prohibited all others from

bottling Coca-Cola in such territory. The Texas Bottling Company, having acquired the exclusive right to bottle and sell Coca-Cola in Texas, might have done likewise. It cannot be said that a monopoly has been established by a contract where such monopoly already existed, and would have continued to exist without such contract.

As stated in our findings of fact, the contracts here under discussion place no restriction upon the sale of bottled Coca-Cola after it has been manufactured by the bottling company. Any one who chooses to do so may operate a bottling plant and put up and sell bottled drinks. If The Coca-Cola Company could not control the manufacture of Coca-Cola by local bottling companies, the rights both of the public and The Coca-Cola Company might be jeopardized; the public in having palmed off on it an inferior article, and The Coca-Cola Company in having the reputation of its trade-mark destroyed by the sale of such inferior article by a few local bottling companies.

(8) Appellee, in support of its contention herein, cites the case of *Jersey Creme Co. v. McDaniel*, 152 S. W. 1187. That case is not in point, for the reason that Jersey Creme syrup was not a patented article, and the Jersey Creme Company had not registered Jersey Creme as its trade-mark. All that it had was a copyright to certain labels. This secured to it the exclusive right to manufacture and sell such labels, but nothing more. This right was not involved in the case. A copyright, while possessing the same attributes of monopoly as a patent or trade-mark differs from both of them, in that it applies exclusively to works of art or literature. In a copyright as in a patent, the owner loses control of the article when it is sold. The purchaser of the copyright labels might have pasted them on cold drinks manufactured by him, or on packages of butter, or other articles of

merchandise, but this would not have constituted them trade-marks.

Holding as we do that the trial court erred in its judgment herein, such judgment is reversed, and judgment is here rendered for appellant.

Reversed and rendered.

BRADY, J., not sitting.

SUPREME COURT OF LOUISIANA

90 SOUTHERN 755

MAY 31, 1920

Rehearing January 30, 1922

COCA-COLA COMPANY, *et al.*,

v.

VIVIAN ICE, LIGHT AND WATER COMPANY.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION 72—BOTTLING AND SELLING SOFT DRINK WITH PLAINTIFF'S TRADE-NAME BLOWN IN THE BOTTLES HELD UNAUTHORIZED USE OF TRADE-MARK.

Where defendant purchased a quantity of the syrup used in making a beverage sold under the name "Coca-Cola" and put it in bottles, using a larger proportion of the syrup than that intended by the manufacturers for bottling purposes and adding some caramel syrup for coloring purposes, and then sold the bottles to the trade generally with the name "Coca-Cola" stamped on the caps and blown into the bottles and with defendant's name stamped thereon as the manufacturer or bottler, such acts held to constitute a use of plaintiff's trade-name without their consent, regardless of whether the article contained in the bottle was genuine Coca-Cola or not.

2. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION 72—TRADE-MARK GIVES OWNER MONOPOLY OF ARTICLE AS SOLD UNDER TRADE-MARK.

A trade-mark gives the owner something in the nature of a monopoly; a monopoly not in the article sold under the trade-mark, but a monopoly of that article as sold under the trade-mark.

V. VIVIAN ICE, LIGHT AND WATER COMPANY

ON REHEARING.

3. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION 98—\$1,000 HELD EXCESSIVE FOR UNAUTHORIZED USE OF TRADE-MARK.

In a suit to enjoin the unauthorized use of a trade-mark and for damages and an accounting, an allowance of \$1,000 held excessive and will be reduced to \$100, where, although plaintiffs were entitled to damages, their amount was not capable of being accurately determined.

PROVOSTY, C. J., and O'NIELL, J., dissenting.

Appeal from First Judicial District Court, Parish of Caddo; T. F. BELL, Judge.

Action by the Coca-Cola Company and others against the Vivian Ice, Light and Water Company in damages and for an injunction to restrain illegal use of trade-mark. Judgment for plaintiffs, and defendant appeals. *Modified and affirmed on rehearing.*

Wise, Randolph, Rendall & Freyer, of Shreveport, for appellant.

Blanchard, Goldstein & Walker, of Shreveport, and *Candler, Thomson & Hirsch*, of Atlanta, Ga., for appellees.

DAWKINS, J.:

This is an action in damages and for injunction to restrain the alleged illegal use of a trade-mark.

Defendant admits substantially the allegations of fact charged against it, but denies the conclusions of law drawn therefrom by the plaintiff.

There was judgment below in favor of plaintiff for the sum of \$1,000, under the trade-mark statute of this state, enjoining the defendant from using the trade-name of the plaintiff, ordering it to account to the plaintiffs for the profits derived from the same, and that it deliver up to plaintiffs, or some one

designated by them, "any and all bottles, crowns, labels, boxes, or advertising matter in its possession upon which appears the name 'Coca-Cola,' or in association with any other words, and also all of the products in a form sufficiently similar to the product of the plaintiffs to cause deception," and that plaintiffs be decreed to have the sole and exclusive use of the trade-mark or name "Coca-Cola," in connection with any drink or beverage.

Defendant prosecutes this appeal.

OPINION.

The plaintiffs are The Coca-Cola Company, a Georgia corporation, the Coca-Cola Bottling Company, incorporated under the laws of Tennessee, and the Star Bottling Works, Limited, a Louisiana corporation. The Georgia corporation is what might be termed the parent company, owner and possessor of the trade-mark "Coca-Cola," and under which it manufactures two kinds of syrup bearing that name; one to be used in the preparation of a soft drink of the same name by soda fountains, which is sold to the trade generally, and the other to be used in putting up the beverage for distribution in bottles. The second syrup is distributed exclusively through the Tennessee corporation, which is required to make definite and specific contracts with those to whom the syrup is sold for bottling purposes, and under which certain well-defined restrictions are imposed as to the quantity and proportions of the syrup to be used, and as to the right of inspection by representatives of the Coca-Cola Company, in order to determine the sanitary conditions under which the bottled drink is to be made; the purpose being, it is alleged, to maintain a particular standard of purity and cleanliness to sustain the reputation of the beverage.

The formula for making the syrup is a secret one, but the record discloses that the kind furnished to

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soda fountains is not as strong as that intended for bottling purposes; the proportions of ingredients used being considerably dissimilar.

Defendant purchased a considerable quantity of the syrup intended for use at fountains, and by the use of a larger proportion than that intended for bottling, and adding some caramel syrup for coloring purposes, had been and was manufacturing, putting up and selling in bottles to the trade generally a beverage with the name "Coca-Cola" stamped on the caps and blown into the bottles, and with the name Vivian Ice Company stamped thereon as the manufacturer or bottler.

The lower court has covered the case so admirably in its written opinion that we adopt and quote from the same at length as follows:

"There can be no dispute about plaintiffs being the owners of this trade-mark, both under the laws of the United States and of the State of Louisiana. Under the United States registration, it covered, not only the syrup, but the beverage or drink to be made from the syrup.

"Section 3 of Act 49 of 1898, after providing for the registration of the trade-mark and the description of the merchandise to be covered by it, provides that 'No other person,' etc., 'has the right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive.' Section 5 of this same act provides that 'Every such person (the owner) may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof,' and the courts shall have the right to grant injunctions restraining such use, etc.

"Defendant has undoubtedly used the trade-mark of plaintiffs without their consent, and under this act we do not think it makes any

difference whether the article contained in the bottle was genuine Coca-Cola or not.

“But, irrespective of this state law, we shall discuss the case from the standpoint of the federal law.

“A trade-mark is designed, not only for the protection of the owner of same, but as well for the protection of the purchasing public; it is a guaranty that the buyer is getting the very article signified by the trade-mark; it is a guaranty by the manufacturer himself that the receptacle contains the very contents intended to be covered by that trade-mark.

“We shall first take up for discussion the authorities cited by counsel for defendant, which authorities, it is contended, bear out the contention that these contracts are in violation of the anti-trust laws, and the equitable writ of injunction does not lie to maintain them.

“The first case is that of *Adam v. Burke*, 17 Wall. 453, 21 L. Ed. 700. All that was held in that case was that when a patented article was once sold the purchaser of same had the right to use it wherever he pleased, and that the right of use stood on a different footing from the right to make and sell.

“The next case is that of *Keeler v. Folding Bed Co.*, 157 U. S. 639, 15 Sup. Ct. 738, 39 L. Ed. 848, in which the court said: ‘One who buys patented articles of manufacture from one authorized to sell them within the territory of the purchase becomes possessed of an absolute property in such articles, unrestricted in time or place, and may sell them in other territory of other assignees of the patent, although he purchased them for the purpose of selling them in such other territory.’ We do not think this case has any bearing; if the defendant had been selling the syrup in the

v. VIVIAN ICE, LIGHT AND WATER COMPANY

original package under the original trade-mark, having purchased same and becoming the absolute owner thereof, then there would be some similarity of cases, and the defendant would have the right to so sell.

“The next case is that of *Bobbs-Merrill Co. v. Strauss*, 210 U. S. 339, 28 Sup. Ct. 722, 52 L. Ed. 1086. In that case the plaintiff was attempting to fix the price of the copyrighted book by contract with the retailer, and the court held the same to be in restraint of trade; there was no question involved in that case of trade-mark, or the protection of the integrity of the goods represented by that trade-mark, but merely a price-fixing scheme, something that is not attempted in this case.

“The case of *Miles Medicine Co. v. Park*, 220 U. S. 373, 31 Sup. Ct. 376, 55 L. Ed. 502, was also nothing but a price-fixing scheme, which was held to be in restraint of trade.

“In the case of *Park v. Hartman*, 153 Fed. 24, 82 C. C. A. 158, 12 L. R. A. (N. S.) 135, known as the *Peruna Case*, the question of infringement of a trade-mark of unfair competition did not arise; it was merely another attempt to fix prices for retailers by means of contracts with the retailers.

“In the *Apollinaris Case* (C. C.), 27 Fed. 18, it was the genuine ‘Hunyadi-Janos’ water as put out by the original bottler and owner of the trade-mark, and as bottled by the owner of the trade-mark.

“The case of *Motion Pictures Patent Co. v. Universal Film Co.* (decided by the Supreme Court of the United States on April 9, 1917), 243 U. S. 502, 37 Sup. Ct. 416, 61 L. Ed. 871, L. R. A. 1917E, 1187, Ann. Cas. 1918A, 959, the attempt was made by way of a licensed patented

machine, and notices stamped thereon, to limit the use of such machine to a certain class of pictures, and no other. The Court held such contracts to be in restraint of trade. While that case shows the trend of the court, the case did not involve the vital principle involved in the present case.

“Practically the same principle in the last-quoted case was also involved in the case of *Straus v. Victor Talking Machine Co.*, 243 U. S. 490, 37 Sup. Ct. 412, 61 L. Ed. 866, L. R. A. 1917E, 1196, Ann. Cas. 1918A, 955, also decided on April 9, 1917.

“Counsel for defendant also quotes the case of *Coca-Cola Co. v. Bennett* (D. C.), 225 Fed. 429, refusing an injunction on the ground that these contracts were in restraint of trade; counsel saying in the brief filed herein: ‘This contention as to the right to confine the sale to licensees for purposes of inspection, etc., was exploded by the federal court in the *Bennett Case* refusing injunction, which virtually denied the proposition dismissing the Coca-Cola Company claim, in which decree the Coca-Cola Company virtually agreed and took no appeal therefrom.’ We shall discuss this case later on, but counsel is mistaken about the appeal, for an appeal was taken to the United States Court of Appeals, and the case reversed; the case on appeal being in 238 Fed. 513, 151 C. C. A. 449.

“In the case of *Krauss v. Peebles* (D. C.), 58 Fed. 591, Judge TART used the following significant and almost prophetic language: ‘It is doubtful whether the sale of merchandise in bulk under a trade-mark of the maker carries with it as incident thereto the right in the vendee to use the same trade-mark as a trade-mark on smaller and retail packages. It is true that the vendee can-

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not be prevented from stating the truth in reference to his wares, and that he may place upon his packages the statement that their contents were made by the real maker, and that they were sold by him under his trade-mark, but it seems to me that it is a different thing for the vendee to use the trade-mark as such. Such use might be characterized as the use of the maker's sign manual to guarantee that the contents of the smaller packages are his manufacture, whereas the truth of the assertion depends wholly on the good faith of the vendee.' In this case the goods put out in the smaller packages were not exactly the same as the original goods, and not exactly the same as the smaller packages put out by the owner of the trade-mark, and it was held that the owner of the trade-mark had the right to protect the integrity of his goods, and that it made no difference whether the other goods were better or worse than those put out by the owner of the trade-mark, that it was a violation of the trade-mark, and could be enjoined. See, also, the case of *Hires v. Xepapas* (C. C.), 180 Fed. 952, which was also a case of two syrups, one intended for bottling and one for fountain use, and the infringer attempted to use the fountain syrup for bottling, and it was held that the owner of the trade-mark had the right to protect the integrity of his goods.

"In the case of *Coca-Cola Co. v. Butler* (D. C.), 229 Fed. 224, exactly the same defense was made as in this case, and it was held that the owner of the trade-mark had the right to maintain the integrity of his product by controlling the use of his basic ingredient, to the extent of granting exclusive licenses and maintaining a system of inspection of the final product as sold to the consumer, and that such contracts were not in

violation of the Sherman Law or the Clayton Law. (26 Stat. 200; 38 Stat. 730.) This decision was handed down by a United States District Judge, and so far as we can find, was never appealed, but it was quoted with approval by the United States Court of Appeals in the Bennett Case.

“In the Bennett Case, as it was decided by the lower court, it was the genuine bottler’s syrup used, and this syrup was sold to Bennett for the very purpose for which he was using it. His right to bottle being revoked as regular licensed bottler (the company) took up the territory. Further, as the lower court stated, there was no question presented of the right of plaintiff to protect its business against unfair competition in the palming off by defendants of a spurious or inferior article for the goods manufactured from plaintiff’s product, and there was, furthermore, no contention in that case as to the proper syrup for bottling purposes.

“In the same case on appeal (238 Fed. 513, 151 C. C. A. 449) the syllabus is as follows: ““A manufacturer of a syrup used with carbonated water to produce a beverage which was sold either at soda fountains or in bottles, whose registered trade-mark covered both the syrup and the beverages, but who bottled none of the beverage, having contracted with others therefor under contracts requiring the purchase of syrup from the manufacturer and its preparation under regulations to protect the quality, can prevent one who has not the manufacturer’s consent from bottling the syrup with carbonated water, even in accordance with the regulations, and selling it under the trade-mark, since otherwise the manufacturer would have no means of protecting the quality of the goods sold under his trade-mark.

““When a manufacturer of an article of food or drink sells it in bulk, and also puts it up in

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bottles bearing a distinctive trade-mark, the purchaser of the article in bulk cannot legally bottle it and affix the manufacturer's label to the bottle.

“ ‘The invalidity, under Sherman Anti-Trust Act, July 2, 1890, c. 647, 26 Stat. 219 (Comp. St. 1913, Secs. 8820-8830), of contracts by which the owner of a trade-mark covering both a syrup and the beverage made therefrom granted the exclusive right to bottle the beverage, does not affect the owner's right to prevent the sale of the beverage under the trade-mark by one who bottled it without consent.’ ” * * *

“If the owner of a trade-mark covering both the syrup and the beverages made from the syrup can prevent the purchaser of the syrup in bulk from making a beverage out of the syrup and putting it on the market under the distinctive trade-mark of the seller, then we can see no good reason why any distinctive system of inspection between the owner of the trade-mark and the bottler of the syrup as a beverage, the same to be placed on the market under the distinctive trade-mark, would be invalid as in violation of the anti-trust laws, and likewise any reasonable contract to that effect, and other reasonable stipulations to protect the integrity of that trade-mark.

“A trade-mark gives the owner of same something in the nature of a monopoly; a monopoly not in the article sold under the trade-mark, perhaps, but a monopoly of that article as sold under the trade-mark. It does not give such a monopoly as does a patent, but it is a monopoly nevertheless, and one that cannot be taken away by any anti-trust law.”

See, also, *American Tobacco Co. v. Polacsek* (C. C.), 170 Fed. 117; *Bulte v. Igleheart*, 137 Fed. 492, 70 C. C. A. 76; *Menendez v. Holt*, 128 U. S. 514, 9 Sup. Ct.

143, 32 L. Ed. 526; *Great Atlantic and Pacific Tea Co. v. Cream of Wheat Co.* (D. C.), 224 Fed. 566.

The lower court also found that, while defendant was putting out as good a quality of goods as its knowledge of the matter would permit, the difference between its product and that produced by the duly authorized representatives of The Coca-Cola Company was marked, and we think this finding is amply supported by the record. However, under the manner and form in which the beverage was put to the trade, the difference from the standpoint of appearance could not be easily detected by the consumer, and the case falls clearly within the doctrine announced in *Cusimano & Co. v. Olive Oil Importing Co., Ltd.*, 114 La. 312, 38 South. 200.

Defendant complains that the court below allowed the plaintiffs to recover the sum of \$1,000 damages, and also ordered defendant to account for the profits which had been realized on the sales of the beverage; it being contended that there was no prayer to support such a recovery, in the first place, nor any provision of law under which it could be allowed, if claimed. However, paragraph C of the prayer is as follows:

“That the damages sustained by your petitioners, and each of them, by reason of the defendant’s aforesaid unlawful acts, be ascertained, and that your petitioners, and each of them, have judgment therefor against the defendant, and that the said defendant be decreed to pay over to your petitioners, and each of them, the amount of said profits, together with all damages sustained.”

The statute provides that:

“All courts of competent jurisdiction shall grant injunction * * * and may award the complainant in any such suit damages resulting from such manufacture, use, sale or display as may

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be by the said court deemed just and reasonable, and shall require the defendants to pay to such person * * * all profits derived," etc. Act. No. 49 of 1898, Sec. 5.

As stated in the case of Cusimano & Co. v. Olive Oil Importing Co., Ltd., *supra*, the exact extent of the damages in such cases is hard to ascertain, and it was the evident purpose of the Legislature to allow a reasonable amount of discretion to the court in determining the amount to be awarded. In view of the facts and circumstances of the present case, we do not think that authority has been abused.

For the reasons assigned, the judgment appealed from is affirmed, at the cost of the appellant.

O'NIELL, J., dissents from the decree allowing damages, and otherwise concurs.

On Rehearing.

LAND, J.:

A rehearing was granted in this case on the question of damages only.

The defendant contends that the decree of \$1,000 damages is a mere fiat of the trial judge, based upon no evidence whatever and *ultra petitionem*, and that the correct judgment in this case should have been in favor of plaintiffs and ordering defendant to account to the plaintiffs, so that the question of damages, if any, could be determined.

Plaintiffs allege, in article xxxii of their petition, that—

“Your petitioners show that, by reason of the fraudulent, willful, and unlawful acts of the defendants as aforesaid, your petitioners have been and are prejudiced and injured in their business, and will be seriously and irreparably injured, unless defendant is restrained and enjoined from

the aforesaid unlawful acts; and the reputation of your petitioners' product has been and is endangered, and its sale of Coca-Cola, by reason of defendant's acts, has been and will be seriously reduced; that it has already sustained loss and damage, the amount whereof cannot be stated with accuracy, by reason, among other things, of ignorance as to the quantity of defendant's product that has been sold by defendant, as above complained of, and in other unfair ways, the number of crowns or stoppers and other articles sold bearing the name 'Coca-Cola' or other imitations of your first-named petitioner's trade-mark which have been used; that the damage done your petitioners will exceed in each instance the sum of \$2,000."

In the prayer of their petition plaintiffs pray:

"That the defendant be cited and that there be judgment in favor of petitioners and against defendant, ordering said defendant to account and pay over to your petitioners all profits diverted from your petitioners or received by the said defendant issuing out of the use of said defendant of your petitioners' trade-mark or trade-name 'Coca-Cola,' or by the sale of its products in the form sufficiently similar to the form of your petitioners' product to cause deceit; that the damage sustained by your petitioners, and each of them, by reason of the defendant's aforesaid unlawful acts, be ascertained, and that your petitioners, and each of them, have judgment therefor against the defendant, and the said defendant be ordered to pay over to your petitioners, and each of them, the amount of said profits, together with all damages sustained."

It will be seen from the above allegations in the petition and in its prayer that plaintiffs pray for damages (1) for injury to the reputation of their products

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and in their business; (2) for the loss of profits which the defendant has diverted to itself, and the extent of which might possibly be determined by an accounting; but the extent of the damage resulting from injury to the reputation of their products and consequent injury to their business, not being susceptible of exact proof, is left to the discretion of the judge.

However, we consider the sum of \$1,000 allowed in our former decree as excessive, and said decree is therefore amended so as to reduce the damages therein allowed from \$1,000 to \$100, and, as amended, is reinstated and made the final judgment of the court.

PROVOSTY, C. J., and O'NIELL, J., dissent on the ground that there were no damages.

THE COCA-COLA COMPANY

STATE OF MISSISSIPPI,
COUNTY OF JACKSON
IN THE CHANCERY COURT

MAY TERM, 1920

No. 3888

THE COCA-COLA COMPANY

v.

M. L. VALVERDE, *et al.*

The above styled cause having been set down on the Issue Docket for final hearing on bill of complaint, process, decree *pro confesso* against M. L. Valverde, Jr., and the Valverde Bottling Works, and the Court having heard and considered the same and finding that the defendant M. L. Valverde, Jr., doing business under the firm name of Valverde Bottling Works, a resident citizen of Jackson County, Mississippi, has infringed upon the patent rights of the complainant, The Coca-Cola Company, a corporation, in that said defendant has, without authority or consent of the complainant, used the patent Hobble Skirt Bottle, bearing the registered trade-mark "Coca-Cola," and has otherwise used bottles, devices, receptacles and containers belonging to complainant, without authority or consent of complainant; and further that said defendant has persisted in the use thereof after notice from complainant, and the Court being further of the opinion that complainant is entitled to an injunction against said defendants, restraining and enjoining them from the use of said receptacles.

It is *ordered, adjudged and decreed* that the defendant, M. L. Valverde, Jr., and the Valverde Bottling Works, be and they are hereby *perpetually enjoined and restrained* from using for any purpose the registered trade-mark "Coca-Cola" belonging to complainant, or from using the patented Hobbleskirt Bottle belonging to said complainant.

It is *further ordered* that said defendants pay all costs accrued herein.

Ordered, adjudged and decreed this the 19th day of May, A. D. 1920.

CHARLES SCOTT BROWN,
Special Chancellor.

THE STATE OF MISSISSIPPI,
JACKSON COUNTY.

I, FRED TAYLOR, Clerk of the Chancery Court in and for said County and State, do hereby certify that the foregoing instrument of writing contains a full, true and complete transcript of and from the original of same as appears of record in Minute Book No. 9, Pages 199-200, of the Minutes of the Chancery Court of Jackson County, Mississippi.

Given under my hand and seal of office this the 20th day of May, A. D. 1920.

(Sd) FRED TAYLOR,
Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.; White & Ford, Pascagoula, Miss., for Coca-Cola Company.

THE COCA-COLA COMPANY

IN BULLOCH SUPERIOR COURT

PETITION FOR INJUNCTION

OCTOBER TERM, 1916

THE COCA-COLA COMPANY, Plaintiff,

v.

A. B. GREEN, doing business as STATESBORO
BOTTLING CO., Defendant.

DECREE.)

The above stated case came on for final hearing on the bill of complaint filed upon the 5th day of November, 1915, with affidavit and exhibits connected therewith; to this complaint the defendant has filed no answer.

The jury at the present term has returned the following verdict: "*We the Jury find for the plaintiff, and we further find that injunction do issue.*" This 25th day of October, 1916, D. L. Lanier, Foreman."

Upon consideration of the case made the Court being fully informed in the premises, finds that the equity in the case is with the complainant as against the said A. B. Green, doing business as the Statesboro Bottling Company, defendant, and that the said complainant is entitled to the relief for which it prays as against the said defendant.

It is *further ordered, adjudged and decreed* by the Court that the injunction heretofore granted in this case, to wit: on the 6th day of December, 1915, as against the said A. B. Green, doing business as the Statesboro Bottling Company, be made permanent.

Let the said A. B. Green, doing business as The Statesboro Bottling Company, pay all costs herein.

This 25th day of October, 1916.

R. N. HARDEMAN,

Judge Superior Court Middle Circuit.

GEORGIA, BULLOCH COUNTY.

I, DAN N. RIGGS, Clerk of the Superior Court of Bulloch County, do hereby certify that the foregoing typewritten pages contain a true and correct copy of suit above mentioned, as the same appears of file in this office.

Witness my hand and seal of said court this August 22nd, 1922.

(Sd) DAN N. RIGGS,

Clerk Superior Court, Bulloch County, Ga.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Johnston & Cone, Statesboro, Georgia, for plaintiff.

On November 5, 1915, The Coca-Cola Company filed a bill in equity against the above defendant, alleging that the defendant, who did not deal in the plaintiff's product, but dealt in other soda waters and beverages, and who did not have authority to use the trade-mark or trade name Coca-Cola, had been procuring from manufacturers or dealers, or from other sources unknown to the plaintiff, bottles with the trade-mark or trade name Coca-Cola thereon, and filling said bottles with soft drink goods not Coca-Cola, and selling same to retail dealers, thus carrying the trade-mark Coca-Cola, the property of plaintiff, annexed to said product, which, in fact, was not Coca-Cola. On December 6, 1915, a temporary restraining order was granted against defendant, its agents, servants, employes and attorneys, from selling or offering for sale, in bottles having the name Coca-Cola thereon, any

THE COCA-COLA COMPANY

soft drink or other product, and from using said trade-mark on any container, or in any way or manner, in the course of business, and on October 25, 1916, the temporary restraining order above referred to was made permanent.

IN THE SUPERIOR COURT OF FULTON
COUNTY, GEORGIA

IN EQUITY

PETITION FOR INJUNCTION, ETC.

THE COCA-COLA COMPANY, Plaintiff,

v.

W. F. HAMMACK, Defendant.

The petition filed herein having been considered, by consent of counsel, it is *ordered, decreed and adjudged*:

That the defendant, his associates, servants, clerks, agents, workmen, employes and attorneys, and each and every person claiming under, by or through said defendant, or in any way connected with him, be *perpetually enjoined and restrained* from:

1. In any way or manner selling a product as and for Coca-Cola, or from in any way or manner passing off any product as and for Coca-Cola that is not the product of The Coca-Cola Co.

2. From marketing a product with the same identical or similar color to the product long made and manufactured by The Coca-Cola Co., except that the defendant herein shall have the right to sell a product of a similar or identical color to petitioner's product when any other product is called for specifically; but this does not give the defendant the right to sell a product of a similar or identical color to the product of petitioner when a product is called for under nicknames, or names that are a colorable imitation of the the name Coca-Cola.

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3. From selling a product that is not Coca-Cola when Coca-Cola is called for, and from using the name Coca-Cola as applied to any product except the product of The Coca-Cola Co.

4. The question of damages having been settled out of court, the Court makes no award thereon.

It is *further ordered* that the defendant pay the costs of this proceeding.

This 4th day of November, 1914.

J. T. PENDLETON,

Judge, Superior Court, Atlanta, Ga.

We consent to the above:

Candler, Thomson & Hirsch, Attorneys for Plaintiff.

Madison Bell, Attorney for Defendant.

STATE OF GEORGIA,
COUNTY OF FULTON.

THE COCA-COLA COMPANY	}	Complaint.
v.		
W. F. HAMMACK.		

To the Sheriff or His Deputy, of said County, Greeting:

The defendant is hereby required, personally or by attorney to be and appear at the Superior Court, to be held in and for said County, on the first Monday in January, 1915, then and there to answer the plaintiff's complaint, as in default thereof said Court will proceed, as to justice shall appertain.

Witness, the HONORABLE J. T. PENDLETON, Judge of said Court, this 15th day of October, 1914.

W. W. CLARKE, Deputy Clerk.

IN THE SUPERIOR COURT OF CHATHAM
COUNTY

MARCH TERM, 1913

THE COCA-COLA COMPANY

v.

P. M. KING.

FINAL DECREE.

The above stated case having come on to be heard, and the Defendant consenting, it is *ordered, considered and adjudged*, there being no dispute as to the facts alleged in the bill, that the defendant, P. M. King, his associates, salesmen, servants, clerks, agents, workmen, employees, attorneys and each and every person claiming under, by or through said defendant or in any manner connected with him be and they are hereby *permanently restrained and enjoined* from in any manner or way selling a product as and for Coca-Cola or from in any manner passing off a product as and for Coca-Cola that is not the product of petitioner when Coca-Cola is called for; from making a product of the same identical color so long used by petitioner in making its product, and from selling any product which is not Coca-Cola when Coca-Cola is called for, and from using said name Coca-Cola as applied to any product except the product of petitioner. Judgment is rendered against the defendant for costs of court.

In Open Court March 17th, 1913.

WALTER G. CHARLTON,
Judge E. J. C. of Ga.

Candler, Thomson & Hirsch, Atlanta, Ga., for
Plaintiff.

IN THE SUPERIOR COURT OF FULTON
COUNTY

IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

C. C. ALFORD, Defendant.

By and With the Consent of the parties hereto, It Is Ordered, Decreed and Adjudged:

That the defendant herein, C. C. Alford, his servants, agents, clerks, and attorneys, be and they are hereby *enjoined* from selling any other product as the product of The Coca-Cola Company, on calls for Coca-Cola, or by the use of any name, nickname, or colorable imitation thereof.

They are *further enjoined* from doing any act or acts by which any product other than petitioner's is sold when customers desire the product of The Coca-Cola Company, and they are *further enjoined* from selling any soft drink or beverage, similar in color to the soft drink or beverage of The Coca-Cola Company, whereby deception and fraud is created.

It is *further ordered* that the defendant pay the costs herein.

At Atlanta, Georgia, May 3, 1916.

JOHN T. PENDLETON,
Judge, Fulton Superior Court.

We consent to the above:

Candler, Thomson & Hirsch, Attorneys for Plaintiff.

C. C. Alford, Defendant.

IN SUPERIOR COURT OF THOMAS COUNTY,
GEORGIA

PETITION FOR INJUNCTION, ETC.

IN EQUITY

THE COCA-COLA COMPANY, Plaintiff,

v.

N. T. PIKE, doing business as RED CROSS DRUG
COMPANY, Defendant.

In above matter, a temporary restraining order having been granted on May 28th, and an order passed requiring that cause should be shown on June 27th, 1914, at nine o'clock a. m. at Valdosta, in the State of Georgia, why permanent injunction should not be granted as prayed:

And process having been issued and defendant served, and this cause coming on regularly to be heard on this date; and defendant having consented that permanent injunction do issue as prayed in consideration of plaintiff waiving its claim for damages, other than the costs of this case;

It is therefore *ordered, considered, adjudged and decreed* that defendant, his associates, salesmen, servants, clerks, agents, workmen, employees, attorneys, and each and every person, claiming under, by or through said defendant, or in any way connected with him, be *perpetually enjoined and restrained* from:

1. In any way or manner selling a product as and for Coca-Cola, or from in any way or manner passing

THE COCA-COLA COMPANY

off any product as and for Coca-Cola that is not the product of your petitioner when Coca-Cola is asked for.

2. From marketing a product with the same identified or similar color so long used by your petitioner in marketing its product.

3. From selling any product which is not Coca-Cola, when Coca-Cola is called for, and from using said name Coca-Cola as applied to any product, except the product of your petitioner.

W. E. THOMAS, Judge.

I consent to the passing of the foregoing order:

N. T. PIKE.

Candler, Thomson & Hirsch, Atlanta, Georgia;
Joseph Hansell Merrill, Thomasville, Ga., for Plaintiff.

FULTON SUPERIOR COURT

THE COCA-COLA COMPANY, Complainant,

v.

JAMES BROWN, Defendant.

In the above stated case the parties hereto consenting it is

Ordered, Adjudged, Considered and Decreed:

That the defendant, and all of his associates, servants, clerks, agents, workmen, employes, and attorneys, and each and every person claiming under or through the defendant, or in any way connected with him, be *perpetually enjoined and restrained*:

1. From in any way or manner selling a product as and for Coca-Cola, or from in any way or manner passing off any product as and for Coca-Cola that is not the product of your petitioner when Coca-Cola is called for.

2. From marketing a product with the same identical color so long used by your petitioner in marketing its product.

3. From selling any product which is not Coca-Cola when Coca-Cola is called for, and from using said name Coca-Cola as applied to any product except the product of your petitioner.

4. From serving any product that is not Coca-Cola when said product is called for, under any of the nicknames recognized as nicknames for Coca-Cola.

5. From selling any product other than Coca-Cola when Coca-Cola is called for, under any nickname or colorable imitation thereof.

THE COCA-COLA COMPANY

It is Further Ordered, Adjudged and Decreed that the defendants pay the costs of this proceeding.

This 20th day of October, 1914.

(Sd.) GEORGE L. BELL,

Judge, Superior Court, A. C.

Candler, Thomson & Hirsch, Atlanta, Ga., for
Complainant.

CRISP SUPERIOR COURT

FILED TO NOV. TERM. 1914

DECREE FEB. TERM, 1915

THE COCA-COLA COMPANY

v.

DOOLY SODA WATER COMPANY,
J. J. JENKINS & W. B. BURKS.

It appearing to the court that the above-stated cause stands in default and that this is the trial term of said cause, and that there is involved in said cause no question of fact, it is, therefore, *considered, ordered and decreed* by the Court that the restraining order heertofore granted be continued and that the defendants and each of them be *permanently and forever enjoined* from doing any of the acts complained of in the petition; from selling or offering for sale in bottles having blown or moulded thereon the trade-mark name Coca-Cola, any soft drink or other product and from using said trade-mark on any container or in any way, or in any manner, in the course of business.

Let this decree be entered on the minutes of the Court and let the defendants pay the costs of Court.

Signed in open Court this March 3rd, 1915.

W. F. GEORGE, J. S. C. C. C.

GEORGIA—CRISP COUNTY:

I, Juanita Reid, Deputy Clerk Superior Court, Crisp County, Georgia, do hereby certify that the

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foregoing page of typewritten matter is a full, true and complete copy of the final decree in the case of The Coca-Cola Co. v. Dooly Soda Water Co., J. J. Jenkins & W. B. Burks, as the same appears of record and file in this office, being recorded on page 65 of Minute Book No. 4 of the records of Crisp County, Georgia.

Witness my signature and official seal of said Court, this 26th day of September, 1922.

JUANITA REID,
Deputy Clerk Superior Court,
Crisp County, Georgia.

*Candler, Thomson & Hirsch, Atlanta, Ga.; Mather
M. Eakes, Cordele, Ga., for Plaintiff.*

22ND JUDICIAL DISTRICT COURT, PARISH
OF EAST BATON ROUGE,
STATE OF LOUISIANA

No. 3703

THE COCA-COLA COMPANY, *et al.*,

v.

JOHN P. KEAYS, *et al.*

JUDGMENT.

This cause came on this day for trial, according to agreement of counsel. Present: *Benjamin B. Taylor*, of the firm of *Taylor & Porter*, attorneys for plaintiffs, and *Lindsay D. Beale*, of the firm of *Laycock & Beale*, attorneys for the defendants. When, after hearing the pleadings, the evidence, and the argument of counsel, the Court considering the law and the evidence to be in favor of the plaintiffs, and against the defendants, for the reasons orally assigned:

It is *Ordered, Adjudged and Decreed* that there be judgment in favor of the plaintiffs, and against the defendants, John P. Keays and his wife, Mistress Eva Jadot Keays, perpetuating the writ of injunction herein issued, and *forever enjoining and restraining* the defendants, John P. Keays, and his wife, Mistress Eva Jadot Keays, and their associates, salesmen, clerks, servants, agents, workmen, employes, representatives, and all others claiming or holding under or through them from in any way or manner making or selling plaintiffs' product in such a way as to pass off the same as and for the product of the said plaintiffs, and

THE COCA-COLA COMPANY, *et al.*

from using in any form whatsoever the name "Coca-Cola" as applied to any drink, or from using any name sufficiently similar to the name "Coca-Cola" as applied to any drink to cause deceit; and from any other act in any manner or form calculated to deceive; and from in any way or manner using the name "Coca-Cola" upon any label or other printed or lithographed or written matter.

It is further *Ordered, Adjudged and Decreed*, that the defendants pay all costs of these proceedings.

Judgment rendered in open court this 28th day of January, 1915.

Judgment read and signed in open court this 1st day of February, 1915.

(Signed) H. F. BRUNOT,
Judge 22nd Judicial District.

A true copy.

Baton Rouge, La., February 5th, 1915.

H. L. SHEPPERS, Dy. Clerk.

Candler, Thomson & Hirsch, Atlanta, Ga.; *John May*, New Orleans, Louisiana; *Taylor & Porter*, Baton Rouge, Louisiana, for Plaintiff.

IN THE SUPERIOR COURT OF FULTON
COUNTY, GEORGIA

No. 25,618—JULY TERM, 1912

IN EQUITY

THE COCA-COLA COMPANY

v.

AXSON C. MINHINNETT.

This cause coming on to be heard by the Court without a jury, it is, by consent of counsel representing the parties hereto, *adjudged, ordered and decreed*:

(1) That The Coca-Cola Company, the petitioner herein, is the sole and exclusive owner of the trade-mark Coca-Cola.

(2) It is *further ordered, adjudged and decreed* that the defendant, his associates, successors, assigns, officers, servants, clerks, agents and workmen and each of them, be and they hereby are *perpetually enjoined* from using the trade-mark Coca-Cola, or any colorable imitation thereof in connection with any soft drink or beverage not manufactured by the petitioner, and they and each of them are likewise *perpetually enjoined* from putting out or selling or offering for sale, directly or indirectly, any soft drink or beverage not manufactured by the petitioner under petitioner's trade-mark, and they and each of them are likewise enjoined from in any wise attempting to make use of the good will and reputation of the petitioner in putting out any imitation and substitute of the petitioner's product as and for Coca-Cola.

THE COCA-COLA COMPANY

(3) They are *further enjoined* from, by any means or device, substituting or imitating the product of the petitioner, by using and selling the same as and for Coca-Cola.

(4) They are *further enjoined* from selling any product as and for Coca-Cola when Coca-Cola is called for, other than the product of petitioner.

(5) It is *further ordered and decreed* that the costs of this case be paid by the defendant.

This July 29th, 1912.

GEORGE L. BELL,
Judge, Superior Court,
Fulton County, Ga.

We consent to the above:

H. H. Turner, Atty. for Defendant.

Candler, Thomson & Hirsch, Attys. for Plaintiff.

IN THE SUPERIOR COURT OF MUSCOGEE
COUNTY, GEORGIA

IN EQUITY

PETITION FOR INJUNCTION, ETC.
FEBRUARY TERM, 1913

THE COCA-COLA COMPANY

v.

W. S. DUNCAN and T. A. PACETTY, doing business as THE PURITY BOTTLING COMPANY.

FINAL DECREE.

This case came on for final hearing on the bill of complaint and the case being in default and after hearing evidence, the jury rendered the following verdict:

“We, the jury, find that the facts stated in the petition to be true and we find for the plaintiff. This Feb. 5, 1913.

“J. G. PEACOCK, Foreman.”

Wherefore it is *decreed* by the court that the equity in the case is with the complainant. The Coca-Cola Company, and that it is entitled to the relief for which it prays against said defendants and the injunction heretofore is hereby made perpetual which the Court granted in this case and the defendants are each and all hereby *perpetually enjoined and restrained* together with their associates, salesman, servants, clerks, agents, workmen and employes and

THE COCA-COLA COMPANY

every person claiming or holding under or through the said defendants, or in any way connected with their business from in any way or manner making or selling their product in such a way as to pass off the same as or for the product of petitioner, and from using in any form whatsoever the name Coca-Cola, or from using any name sufficiently similar to the name Coca-Cola as applied to any drink as to cause deceit and from any other act in any manner or form calculated to deceive relative thereto.

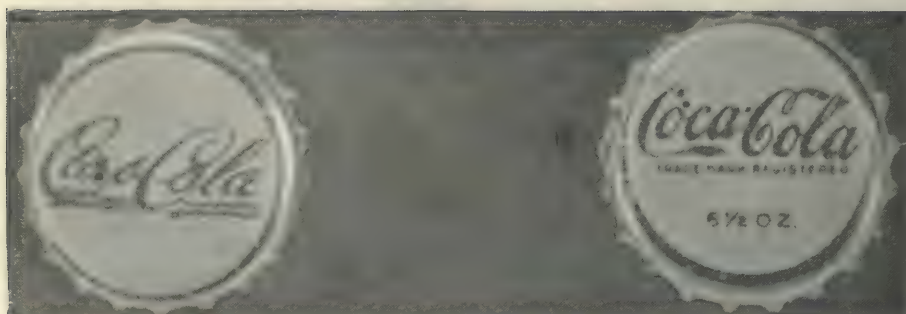
It is *further decreed* that The Coca-Cola Company has the sole and exclusive right to the use of the mark or name Coca-Cola in connection with the drink or beverage and it is *further decreed and adjudged* that petitioner has the sole and exclusive right to the peculiar and individual design or form of writing the name Coca-Cola described in the petition.

Petitioner waives the right to the relief prayed for in prayers (b) and (c) as to an accounting.

It is *further decreed and adjudged* that defendants pay the sum of \$.... costs. In Open Court, this February 5, 1913.

(Signed) S. P. GILBERT,
Judge S. C. C. C.

T. L. Bowden, A. W. Cozart, Candler, Thomson & Hirsch, Attys. for Petitioner.



IN THE SUPERIOR COURT
OF BIBB COUNTY,
GEORGIA

APRIL 15, 1918

THE COCA-COLA COMPANY

v.

D. J. O'CONNELL.

CANDLER, THOMSON & HIRSCH, Atlanta, Georgia,
HALL & GRICE, Macon, Georgia,
For Complainant.

THE COCA-COLA COMPANY

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

THE COCA-COLA COM-
PANY,

Complainant,

v.

D. J. O'CONNELL,

Defendant.

} PETITION FOR
INJUNCTION, ETC.

The jury on the trial of this cause having returned a verdict in favor of the complainant and against the defendant, and further finding that the injunction prayed for should issue;

It is by the Court *considered, ordered and decreed* that the defendant, his successors, assigns and agents, and any person claiming under or through him, be *perpetually enjoined*:

(a) From trading under the name of CARO-COLA BOTTLING COMPANY.

(b) From any form or manner using the name CARO-COLA, or any name which is a colorable imitation of the registered trade-mark of petitioner, as described in the pleadings.

(c) From using or causing to be used any bottle or bottles with the trade-mark name of complainant thereon.

(d) From bottling any drink that is similar in appearance to the drink of complainant without using sufficient distinguishing features thereon, so as to put the public on notice that the drink bottled by defendant is not the drink of complainant.

(e) From using any bottle that is covered by the design patent of complainant, and from using any bottle that is a colorable imitation, or any infringement thereof.

(f) From buying, handling, dealing in, or having in possession any bottle with the name Coca-Cola thereon.

So ordered and decreed, in Open Court, this April 15th, 1918.

H. A. MATHEWS,
Judge Superior Court, Bibb County.

THE COCA-COLA COMPANY

IN THE SUPERIOR COURT OF WARE
COUNTY, GEORGIA

MAY TERM, 1913

THE COCA-COLA COMPANY

v.

D. L. KEEN, Doing Business as
THE GEORGIA BOTTLING WORKS.

Now at this time, come the parties by their respective attorneys, and by agreement of parties, it is

Considered, ordered and adjudged by the Court that the said defendant, and all of his associates, servants, clerks, agents, workmen and employes and every person claiming or holding under or through the said defendant, or in any way connected with his business as stated in the petition, in the above entitled cause, ~~be enjoined and restrained~~, during the pendency of this suit and until the further order of the Court, under penalty of attachment as for contempt of Court, as follows:

(1) From using the name "Caro-Cola," whether the same be written in the same form of script so long used by plaintiff in writing the name Coca-Cola, or not; and from using said script in which the name Coca-Cola has been so long written by plaintiff; and from using any other imitation of said script; and from using any colorable imitation of the name Coca-Cola as applied to any drink. It is understood, however, and agreed that the defendant may use the name "Keen's Kola" written in a different form of script from that so long used by the plaintiff in writing the name Coca-Cola.

(2) From using any bottles with the trade-mark Coca-Cola, or any colorable imitation thereof, blown therein; or from using any crown with the trade-mark Coca-Cola blown therein; or any colorable imitation thereof.

Let this order be entered upon the minutes of the Court.

Granted.

(Signed) T. A. PARKER,
Judge Superior Courts,
Waycross Judicial Circuit.

We consent to the above:

*Candler, Thomson & Hirsch and
Wilson, Bennett & Lambdin,*
Attorneys for Plaintiff.

A. B. Spence,
Attorney for Defendant.



Trade-Mark Registrations

United States Nos. 22,406 and 47,189

STATES :

Arizona	Maryland	Oklahoma
Arkansas	Massachusetts	Oregon
California	Michigan	Pennsylvania
Colorado	Minnesota	Rhode Island
Connecticut	Missouri	South Carolina
Delaware	Montana	South Dakota
Florida	Nebraska	Tennessee
Georgia	Nevada	Texas
Idaho	New Hampshire	Utah
Indiana	New Jersey	Vermont
Iowa	New York	Virginia
Kansas	North Carolina	Washington
Kentucky	North Dakota	West Virginia
Louisiana	Ohio	Wyoming
Maine		

FOREIGN COUNTRIES :

Australia	Guatemala
Bahamas	Haiti
Belgium	Honduras and British
Bolivia	Honduras
Bermuda	India
Brazil	Italy
Canada	Japan
Chile	New South Wales
China	(protected by
Colombia	Australian
Costa Rica	Registration)
Cuba	Nicaragua
Denmark	Panama
Ecuador	Paraguay
France	Peru

TRADE-MARK REGISTRATIONS

FOREIGN COUNTRIES—Continued

Philippines	Spain
Porto Rico	Venezuela
Portugal	Virgin Islands
San Salvador	

The Registration of the Trade-Mark

Coca-Cola

Is Pending in the Following Foreign Countries:

Argentina	Great Britain
Austria	Holland
Czecho-Slovakia	Switzerland
Germany	

The Coca-Cola Company, a corporation organized and existing under the laws of the State of Delaware, is licensed to do business in the following states:

Arkansas	Mississippi
California	Missouri
Delaware	New York
Georgia	Oregon
Florida	Pennsylvania
Illinois	Tennessee
Louisiana	Texas
Massachusetts	Utah
Maryland	Virginia

THE COCA-COLA COMPANY

THE CHAIN OF THE COCA-COLA COMPANY'S TITLE TO COCA-COLA

<i>Date</i>	<i>Manufacturer</i>	<i>Owner</i>
May, 1886	Pemberton Chemical Co.....	J. S. Pemberton 107 Marietta St., Atlanta, Ga.
To		J. S. Pemberton
July 8, 1887	W. E. Venable.....	W. E. Venable Geo. S. Lowndes Marietta and Peachtree, Atlanta, Ga.
To		J. S. Pemberton
Dec. 14, 1887	Woolfolk Walker...	Woolfolk Walker Mrs. M. C. Dozier 107 Marietta St., Atlanta, Ga.
To		Walker, Candler & Co.
April 14, 1888	{ Woolfolk Walker... F. M. Robinson.....	Woolfolk Walker Mrs. M. C. Dozier 107 Marietta St., Atlanta, Ga.
To		Walker, Candler & Co.
April 17, 1888	F. M. Robinson....	Asa G. Candler Woolfolk Walker Mrs. M. C. Dozier, 63 Peachtree St., Atlanta, Ga.
To		Walker, Candler & Co.
Aug. 30, 1888	F. M. Robinson....	Asa G. Candler 63 Peachtree St., Atlanta, Ga.
To		Asa G. Candler
April 22, 1891	F. M. Robinson....	63 Peachtree St., Atlanta, Ga.
To		The Coca-Cola Co.
Feb. 22, 1892	F. M. Robinson....	Atlanta, Ga.
To		The Coca-Cola Co.
1893	The Coca-Cola Co..	Atlanta, Ga.
To		The Coca-Cola Co.,
Sept. 12, 1919	The Coca-Cola Co..	Atlanta, Ga.
		(The present company owned by thousands of stockholders)

On the following pages are illustrated the various contracts, bills of sale, etc., covering the above chain.

CHAIN OF TITLE

Whereas John S. Pemberton, of the City of Atlanta, in the County of Fulton and State of Georgia, is the owner of a formula for Coca-Cola Syrup and Extract, and did, on the 28th day of June 1887, register in the United States Patent office a Label, under the title of Coca-Cola Syrup and Extract, Number 5272, and

Whereas Willis E. Venable and George S. Lowndes, both of the same place, are desirous of acquiring an interest in said formula and registration:

Now therefore, This Indenture WITNESSETH, - that for and in consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, as well as in consideration of an advance or loan of \$1200.00 without interest, but which is to be refunded to said ~~Lowndes~~ & Lowndes & Venable out of my share of profit in the hereinafter mentioned business; and in further consideration of the said Lowndes & Venable furnishing the necessary capital to conduct said business without charging interest therefor;

I, the said John S. Pemberton, do hereby sell and assign a two-thirds interest in and to said registered label to the said Willis E. Venable and George S. Lowndes, and the sole right to manufacture, sell and control the business and use the said label for the benefit of the parties concerned, for and during the full term of said registration or any renewal thereof, and further agree to furnish said Venable and Lowndes all knowledge and information necessary for the manufacture of the said Coca-Cola Syrup and Extract.

And it is agreed by and between the parties hereto that said Lowndes & Venable shall alone conduct the business of manufacturing and selling said Coca-Cola Syrup and Extract during the term of registration of said label.

It is further agreed that they shall take all the material and fixture said Pemberton has on hand that can be used in the manufacture of Coca Cola Syrup and Extract for the benefit of said business, paying the said Pemberton therefor original cost.

It is further agreed that said Pemberton shall receive one-third the net profits arising from said business, and that he shall have the privilege of drawing the same monthly.

This July 8th 1887

*Witness
Ed. Hollard*

*Signed in duplicate
John S. Pemberton
W. E. Venable
Geo. S. Lowndes*

THE COCA-COLA COMPANY

Venable & Lowmeyer		AN
Do Pemberton Chemical Co.		
10 Gal. Coca Cola	90¢	\$ 9.00.
1 Broomhandle.		30.00.
1 Grate "		4.32
Brick.		5.68
1 Stencil Plate, Coca Cola		75.
8 lbs Phosphoric Acid	220.	
5 oz. oil Nutmeg	40¢	2.00
1/2 lbs. Phos. Esth. Nutmeg		1.30.
500 Small Tin Signs		6.00.
1 " " Wood Engraving		12.00.
2 Electro.		1.40
1600 Posters		6.00.
1 Large " Wood Cut		8.00.
14 oil Cloth Signs at Pemberton		14.00.
60 Tin Cases (1 Gal.)	16¢	9.00.
40 lbs. Phos. Esth. Coca Leaves		40.00.
45 Coca Tin Signs		4.60.
1 Fine Gal Keg		.90.
1 white Wash Box		.50.
1 Wood Cut (1 in Electro)		1.00.
1 Perculator.		1.50.
5 oz oil Spice		1.05.
15 " " Lemon		2.80.
3/4 " " Coriander		1.25
1 " " Cinnamon Tree		1.20
10 " Ex. Vanilla		.60.
5 " oil Nutmeg		2.00.
5 lbs Citric Acid		2.75
1 lb. Elix. Orange		.80
23 g. Merck's Caffeine		18.86
3 Cloth Filters		.75
3/4 g oil Neroli		.337
Amount till used.		74.21
		\$ 268.29

CHAIN OF TITLE

To Amount brok. over \$268.29
 5 M Coca Cola Cards (6.00) 15.00
 \$283.29

1887
 July 21 By Cash \$150.
 " 30 days Acct 133.29
 283.29 \$283.29

J. B. Pemberton
 Pres.
 Pemberton Chemical Co

THE COCA-COLA COMPANY

#10 ALEXANDER, J. B. PEMBERTON,
President Vice-President
F. B. BRIDGSON,
Secretary

Office of

Pemberton Chemical Co.

• Pemberton's •

107, Madison Street.

French Wine Coca

Globe Flower Cough Syrup.

Indian Queen Hair Dye.

Coca-Cola Syrup.

Manufacturing Chemists.

and sole Importers of

Pemberton's French Wine Coca.

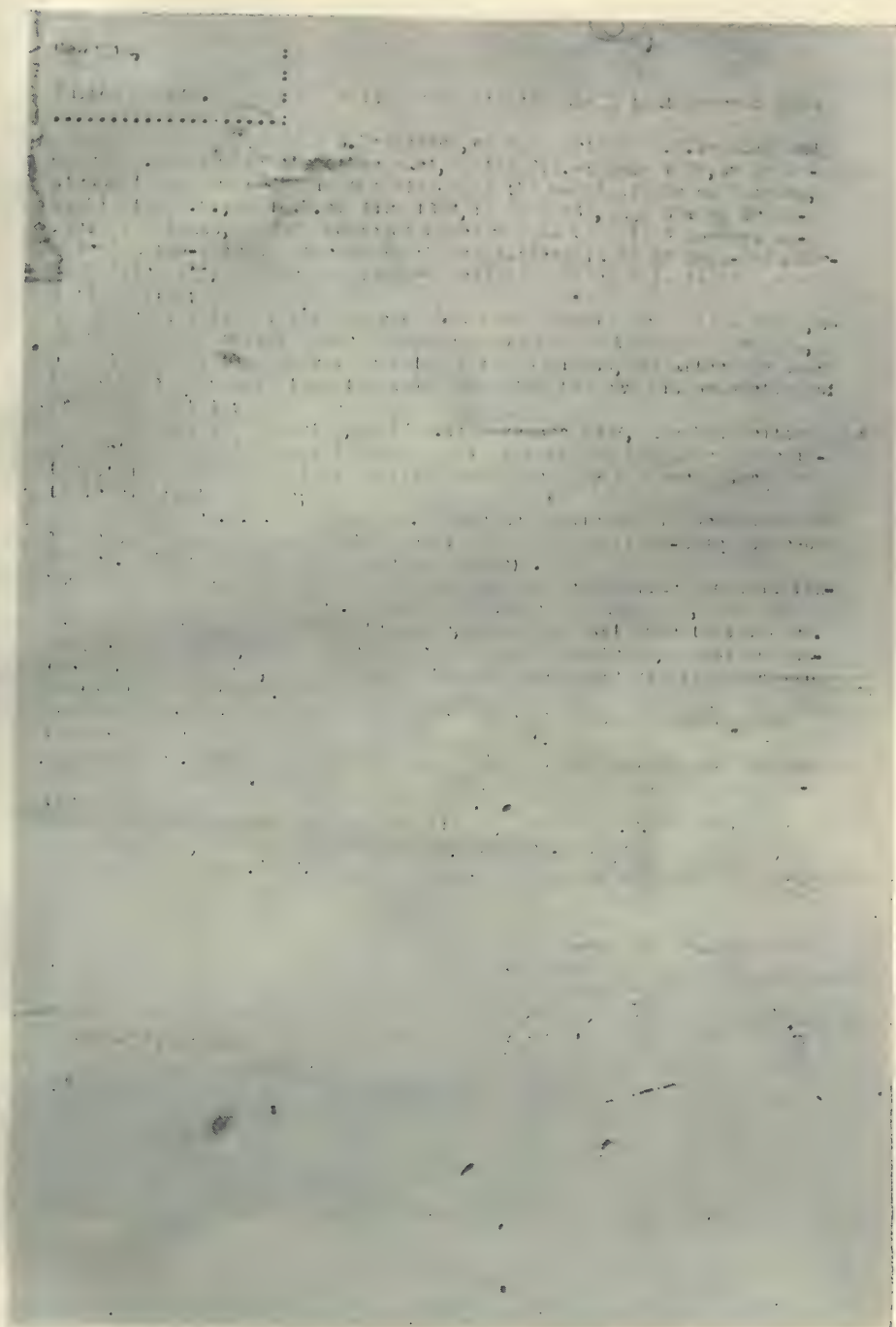
GINGERINE.

Atlanta Ga July 13th 1887

This Agreement witnesseth that
We Vinable & Co & Lowndes agree
that the Twelve hundred dollars
advanced by them to J. B. Pemberton
as per agreement and Transfer
bearing date July 8th 1887 and
signed by said Vinable Lowndes
Pemberton shall be paid back to
said Vinable & Lowndes out of
the first profits arising from
the sale of Coca Cola Syrup & Extract
and not ^{entirely} out of J. B. Pemberton's
profits ~~as~~ as it now reads
in above mentioned Contract.

W. E. Vinable
& J. S. Lowndes

CHAIN OF TITLE



THE COCA-COLA COMPANY

I hereby consent that Geo S Lawrence and
Willis E Venable may sell and transfer
their interest in within contract
and subrogate the purchaser to all
the rights powers & privileges hereunder.
This Dec 13th 1887 J. L. Pemberton
Witness

Willis E Venable

CHAIN OF TITLE

in County } I have all men by these
 { Resumes that we J. S.
 Plumberton & C Plumberton of said
 shale & currey have this day sold
 to Muller Candler & Co - composed
 of Noofock Micher - A. J. Candler
 and Joseph Jacobs - all over
 right title & interest in quick
 to the Patent - I have
 as the Coca Cola - made and
 the uppermanery and reg. at
 there to belonging - For the sum
 of five hundred & fifty dollars
 fifty to be paid this day - and
 balance in 30 days - at
 30 days - This April 14th 1888.

W. J. J. J.
 J. S. J. J.

J. S. J. J.
 J. S. J. J.

Whereas the Profrat. matter, was in the
of said State, county on the owner of said
Thirds interest in old formula for Coca Cola
Syrup & Extract and also a label under the name
of said of Coca Cola Syrup & Extract which label
under said name was in the 28th day of June 1887
being registered in the United States Patent Office
being No. 5272 by Mr. J. B. Pemberton - we being
Doughs said and Thirds interest from W. B. D. & Co.
& C. & B. & Co., they having bought from said J. B.
Pemberton, now for and in consideration of
the sum of Seven hundred & fifty
- - - - - Dollars & no in hand paid for
receipts & other of is hereby acknowledged
we hereby grant Doughs, all recovery and
Doughs & B. & Co. & Co. & Co. & Co. & Co. & Co.
Coca Cola interest in said and the two
Thirds interest which are now of said as obtain
ed by us as before said in said receipt in label
and said formula for Coca Cola Syrup & Extract.
This interest is, except one half the entire
interest which we have from (said Thirds) in
said label & formula in interest in 7 labels as
a whole - so as to give to the said Coca Cola of
One third of the entire property in said label

In winter when the Red Ws.
Meadow-lark & Wolf-raven have
been set their hands & seen this the
17th day of April 1888.

Wm. H. Robinson

CHAIN OF TITLE

Office of ASA G. CANDLER & CO.

WHOLESALE DRUGGISTS.

POST OFFICE

DICTATED BY

Constantin, Co

6

New York

Fulton Co.

This instrument is a deed of gift, to wit: Whereas Mrs. M. C. Candler and her husband are the owners of the right, title and interest in and to the registered label of "Coca-Cola Syrup & Extract" having acquired the same by purchase from W. A. Verdon and George S. Lewis on or before the 14th, 1887. (the said Mrs. M. C. Candler and her husband and the said W. A. Verdon and George S. Lewis being the parties to a deed of gift by which the said W. A. Verdon and George S. Lewis transferred to said two-thirds interest, having been a part of the same, on the 14th day of July, 1887, and recorded in the office of the County Clerk of Fulton, Georgia, U.S. and the date of July 1887, Book 1, 30, Page 100 of transfers of patents.

Now, for full consideration of the sum of two hundred dollars (\$200.00) due respectively December 1, 1886, February 15th, 1888, April 15th, 1889, and July 15th, 1890, bearing interest from the 1st of September, 1886, at the rate of six per cent per annum.

It witness whereof we have hereunto set our hands and seals this August the 20th, 1890.

Witness

A. J. Cooper

S. H. Landerum

Mrs. M. C. Candler

Thos. H. Candler

CHAIN OF TITLE

Office of Asst. Sec. Chandler

SOLE PROPRIETOR OF

Coca-Cola

DELICIOUS, REFRESHING,
EXHILARATING, INVIGORATING

THE NEW AND POPULAR FOUNTAIN DRINK, CONTAINING THE TONIC PROPERTIES OF THE WONDERFUL COCA PLANT AND THE FAMOUS COLA NUT

ON DRAUGHT AT ALL POPULAR SODA FOUNTAINS

AT 5^c PER CLASS.

SOLD AT 25 CENTS PER BOTTLE BY DRUGGISTS AND GROCERS

Atlanta Ga.

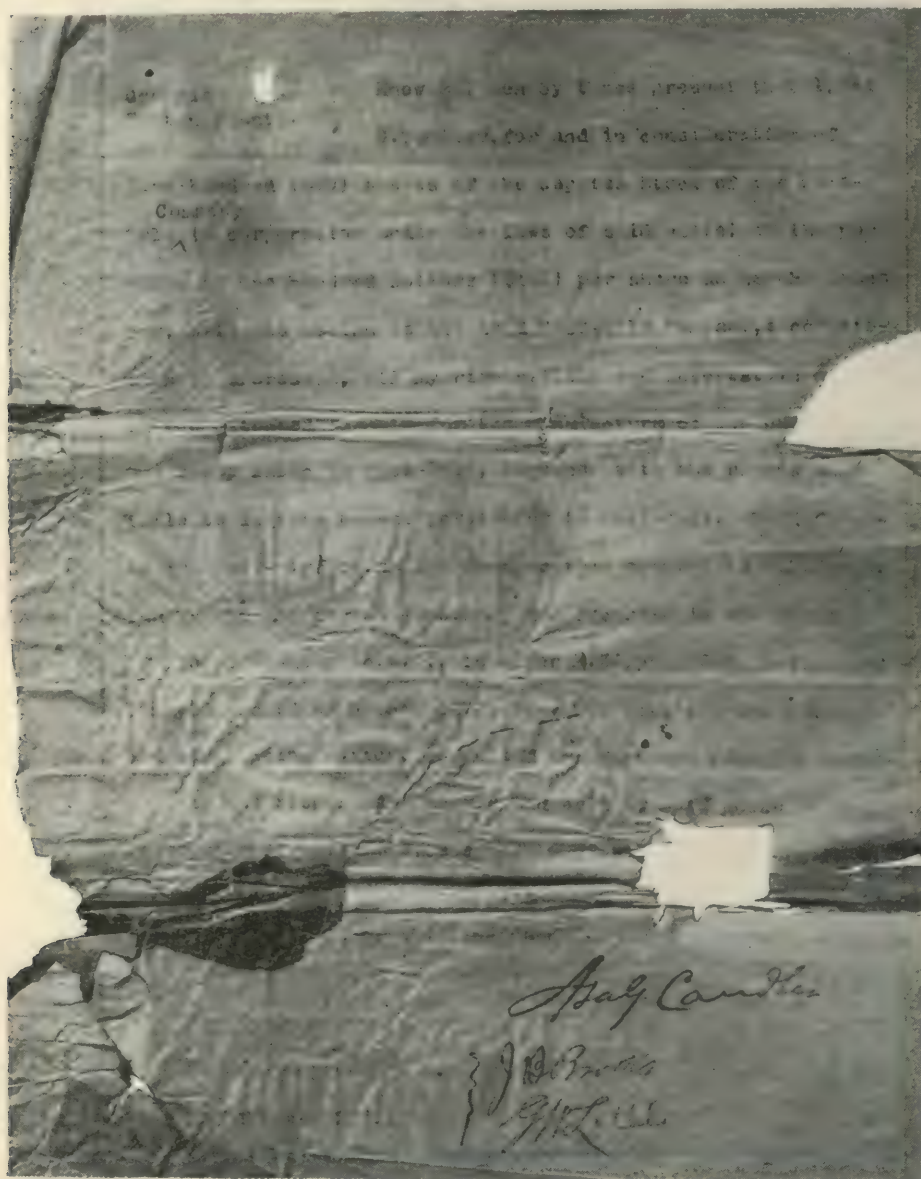
184

[illegible]

Witness
W.B. Morris

Maette, Cavalier. V. 6
per Jo Jacob

THE COCA-COLA COMPANY



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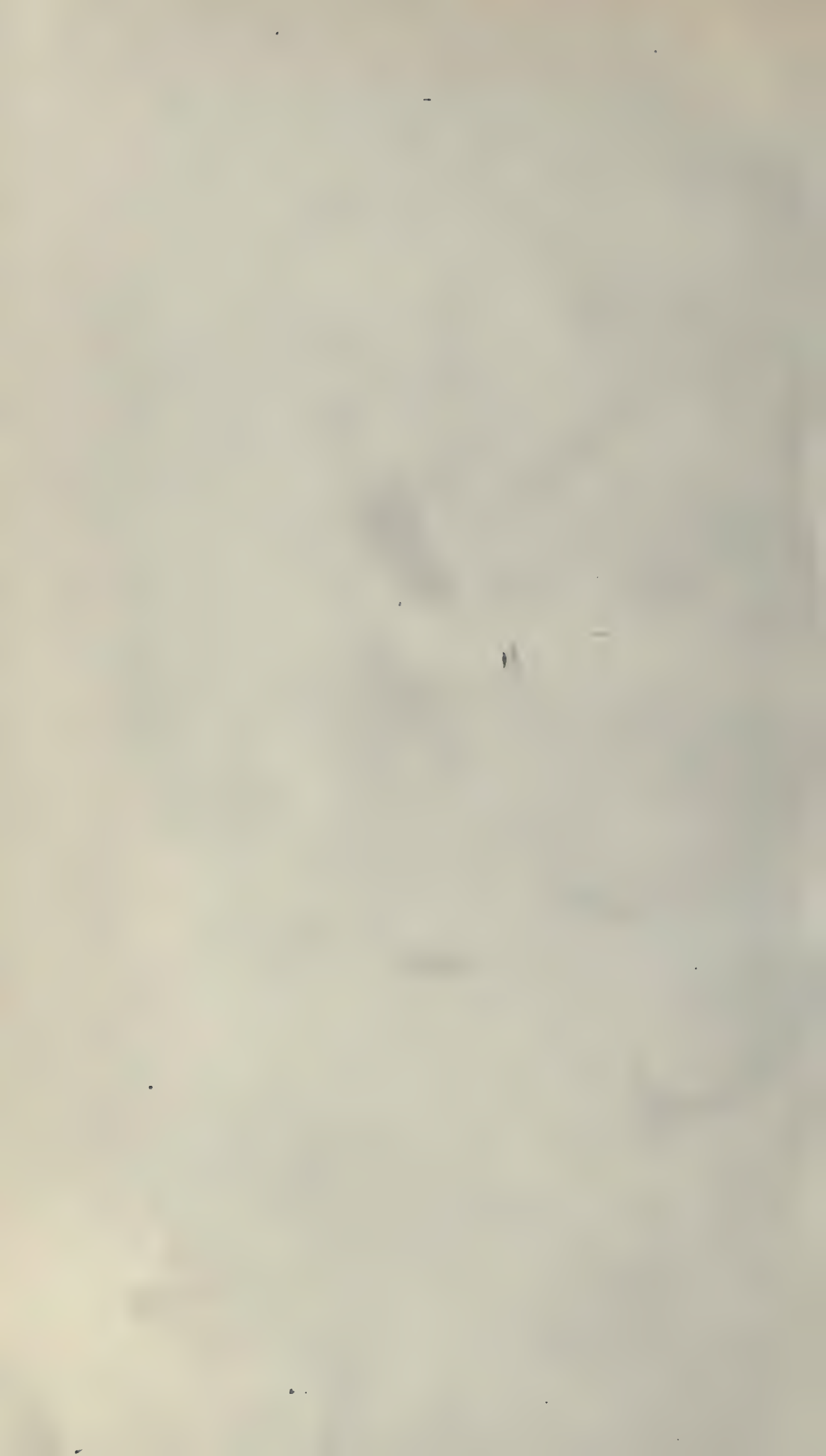
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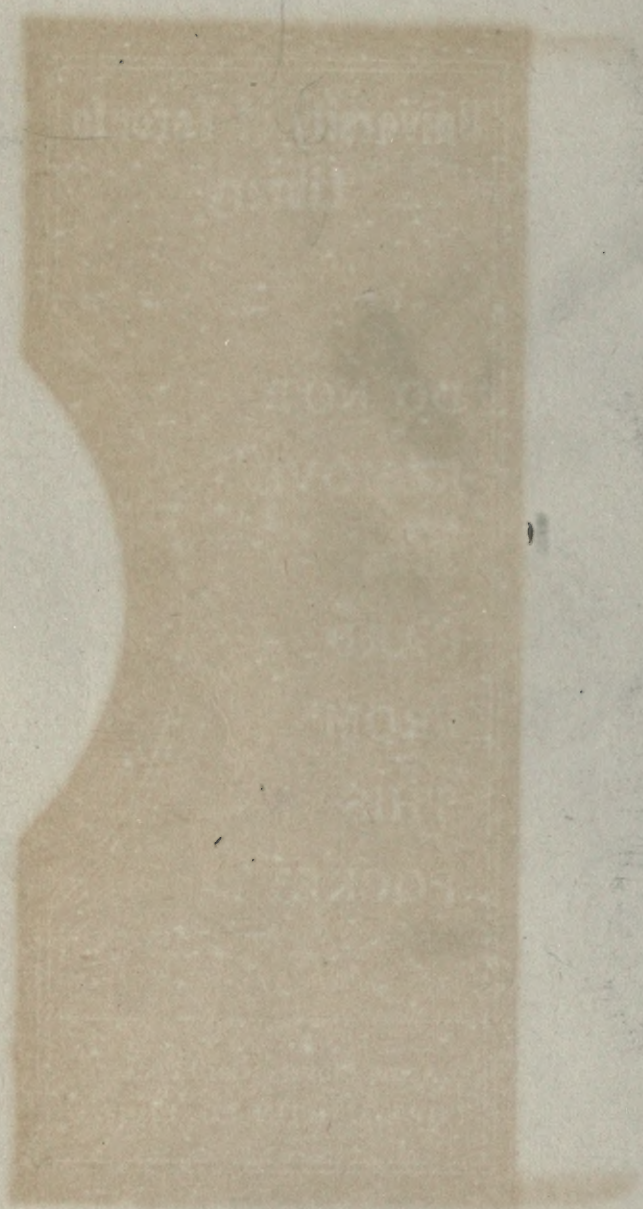
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